Tax News

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Dear reader

On 17 June 2016, the Swiss Parliament adopted the Corporate Tax Reform III package to strengthen Switzerland’s attractiveness as a business location. The cantons are now required to adjust their cantonal tax laws in accordance with the new legislation. Several Cantons have already presented their strategy for the implementation of Corporate Tax Reform III into their cantonal tax law.

In addition, on 30 September 2016, the Swiss Parliament agreed on an important amendment to the Swiss Withholding Tax Act in connection with the application of the dividend notification procedure.

In this issue of our quarterly newsletter we will inform you on these milestones and further current tax developments.

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Swiss Parliament adopts changes to Swiss dividend notification procedure in favor of taxpayers

In the current fall session of the Swiss Parliament, the Council of States (20 September 2016) and the National Council (22 September 2016) reconciled their differences and agreed on an amendment to the Swiss Withholding Tax Act in connection with the application of the dividend notification procedure (withholding tax relief at source). The legislation amendment was formally approved in the final vote of the United Federal Assembly on 30 September 2016. If no referendum for a public vote is invoked, the Swiss Government will determine the date of entry into force of the amendments by early 2017.

Under the revised law, application of the dividend notification procedure remains possible even if the 30-day filing period is not observed. As a consequence, late filing of the dividend notification forms no longer results in a denial of the notification procedure and no longer has default interest consequences. The legislative change will apply with full retroactive effect. Thus, the new provisions will also apply to dividends that occurred before the effective date of the amended law, unless the dividend withholding tax liability or the default interest claims became time-barred or legally effective before 1 January 2011. As a consequence, companies required to pay default interest due to non-compliance with the 30-day filing period may be entitled to reclaim the default interest paid.

Notification procedure

A Swiss company is generally required to deduct and remit a 35% withholding tax on dividend payments. The shareholder may request partial or full refund of the withholding tax based on Swiss domestic law or the applicable double tax treaty. Relief at source is available for intra-group dividends through the dividend notification procedure. Under this procedure, the Swiss company may fulfill its withholding tax obligation by way of notifying the Swiss Federal Tax Administration of the dividend distribution instead of withholding and remitting the full dividend withholding tax.

In summary, the following compliance duties must be fulfilled in order to apply the dividend notification procedure:

1. The withholding tax declaration form (Form 102, 103 or 110) must be duly filed with the Swiss Federal Tax Administration (regardless of whether the notification or the remittance and refund procedure applies).
2. The dividend payment must be notified to the Swiss Federal Tax Administration by additional filing of either Form 106 (for dividends to Swiss recipients) or Form 108 (for dividends to foreign recipients) together with the withholding tax declaration form.
3. Both the declaration and the notification form must be filed within 30 days of the dividend due date. If no specific due date is set for the dividend, it is assumed that the dividend becomes due on the date of the shareholders’ meeting.
4. Furthermore, in the case of dividends paid to a foreign parent company, the Swiss company must formally request permission to apply the notification procedure by filing Form 823, 823B or 823C (application for the international notification procedure) with the Swiss Federal Tax Administration before the dividend becomes due.

Court decisions

In a landmark decision of the Swiss Federal Supreme Court issued on 19 January 2011, the court held that the 30-day filing period is a forfeiture deadline and that, if the 30-day declaration deadline is not complied with, the right to apply the notification procedure is definitely forfeited. This judgment has since then been followed and confirmed in other recent court cases.

Following the initial court ruling, the Swiss Federal Tax Administration adopted a very restrictive practice and requested the remittance of the full Swiss withholding tax of 35% plus levied interest for late payment (5% per annum) if the Swiss dividend payer failed to file the declaration and notification forms within the 30-day period. The Swiss withholding tax was then partly or fully recoverable by the shareholder in the course of the ordinary refund procedure, however, the interest for late payment constituted a final cost for the Swiss taxpayer.

New regulations

The restrictive practice of the Swiss Federal Tax Administration led to strong opposition and to a political discussion resulting in the proposal of a legislative change in order to clarify the formalities in connection with the application of the dividend notification procedure.

The National Council approved the proposed changes in June 2015 and was followed by the Council of States, which approved most of the proposed changes in September 2015.
Because the two chambers did not reach consent on the retroactive effect of the amendment as well as on the sanctioning mechanism in the case of non-compliance, a procedure for reconciliation of the differences was initiated. Based thereon, the National Council (7 December 2015) as well as the Council of States (20 September 2016) eventually approved the retroactive effect of the new provisions. Furthermore, the two chambers finally also agreed that companies, that do not comply with the 30-day filing period, should be sanctioned by means of an administrative fine instead of a criminal sanction procedure.

Following the final vote by both chambers, which is scheduled to take place on 30 September 2016, the revision of the Swiss Withholding Tax Act is expected to enter into force in 2017. It should be noted that the legislative change is subject to a referendum, which would have to be invoked during a 100-day period following the publication of the new law in the Official Gazette.

The revised regulations include the following easing for Swiss corporate taxpayers:

• The 30-day period is redefined as an administrative deadline, i.e., the application of the notification procedure remains possible even if the dividend is notified after the 30-day period provided the substantive conditions are fulfilled. As a consequence, non-compliance with the 30-day filing requirement by a Swiss taxpayer qualifying for the notification procedure no longer leads to a denial of the notification procedure.

• No interest for late payment applies as long as the substantive requirements for the notification procedure are met and the dividend is declared and notified to the Swiss Federal Tax Administration (regardless of the 30-day period).

• Late filing of the declaration and notification forms is sanctioned by means of a commensurate administrative fine which is limited to CHF5,000.

• Once entered into force, the new law will apply with retroactive effect to all cases where the claims for tax and/or interest for late payment have not passed the statute of limitation or have become legally effective prior to 1 January 2011.

Assessment

With this taxpayer-friendly and well-received legislative change, the Swiss Parliament has rectified the recent case law of Swiss courts that was broadly perceived as incorrect and resulted in a rather restrictive practice of the Swiss Federal Tax Administration with adverse impact on Swiss corporations. The new guidelines are in line with the traditionally business-friendly mindset of the Swiss legislative body and will ensure a smooth and efficient handling of the notification procedure for intra-group dividends. In addition, it demonstrates well that negative developments will be countered by the political bodies and that the Swiss Parliament is committed to strengthening legal certainty and maintaining a business-friendly environment in Switzerland.

Implications

Action is required for Swiss companies adversely impacted by the restrictive practice of the Swiss Federal Tax Administration imposing interest charges on late payment related to Swiss dividend withholding taxes. Provided the withholding tax or the interest has not become time-barred or legally effective already before 1 January 2011, the company may be able to reclaim interest payments made. Businesses should analyze whether a reclaim may be justified under the new law and, where appropriate, file respective refund claims. Once the new regulations enter into force, the refund claims must be filed with the Swiss Federal Tax Administration within one year.

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The Swiss Corporate Tax Reform III (CTR III) foresees the replacement of certain preferential tax regimes with a new set of internationally accepted measures. The legislative changes will implement a broad reduction of the headline corporate tax rates and will ensure that Switzerland remains attractive for multinational corporations in a post-base erosion and profit shifting (post-BEPS) environment by providing planning certainty for the future and ensuring compliance with international taxation standards.

On 17 June 2016, the Swiss Parliament adopted the final CTR III package to strengthen Switzerland’s attractiveness as a business location.1 The new legislation will be subject to a public vote, which will likely take place in February 2017, and is expected to become effective on 1 January 2019.

The cantons are required to adjust their cantonal tax laws in accordance with CTR III. Some measures are mandatory and have to be implemented by the cantons and others are optional. Each canton will, therefore, implement the CTR III individually by tailoring its cantonal tax legislation to its specific needs and circumstances.

On 19 September 2016, the Government of the canton of Zug presented its strategy for the implementation of CTR III into cantonal tax law. The core component of the plan is the reduction of the corporate income tax rate to approximately 12% (including federal tax). Furthermore, additional tax relief measures will be introduced at the cantonal level such as a patent box, increased deduction of research and development (R&D) costs and a notional interest deduction on surplus equity.

In order to maintain its attractiveness as a business location, the Government of the canton of Zug plans the following core measures for the implementation of CTR III at the cantonal level:

Tax rate reduction

The corporate income tax rate is to be reduced from the current maximum rate of 14.6% to approximately 12% (including federal tax). In addition, adjustments are planned with respect to the annual capital tax.

Patent box and R&D super deduction

Another part of the package is the introduction of a patent box regime as well as the concept of an R&D super deduction to promote innovation and R&D activities in Switzerland. The cantonal tax relief for qualifying patent box income will be 90% and qualifying R&D expenses will be eligible for an increased cantonal tax deduction of 150%.

Notional interest deduction

The Government of the canton of Zug furthermore plans to introduce the instrument of a notional interest deduction on surplus equity at the cantonal level in the same way as it will be introduced at the federal level.

The objective is to offer an attractive alternative measure for existing group financing entities as well as to promote group financing and treasury activities in the canton of Zug. While the regulations governing the details of the mechanism for calculating the notional interest expense are still to be issued, it is expected that the base deduction may result in a cash tax rate of between 2.5-4% for a fully equity funded company engaged in group financing activities with its domicile in the canton of Zug.

Limitation of cantonal tax relief

The Government of the canton of Zug furthermore aims – in line with the new federal harmonization law – to limit the maximum cantonal tax relief under the patent box, the R&D super deduction and the notional interest deduction to 80% of the company’s net profit in total.

Step-up upon migration to Switzerland

Further, a new rule will be introduced with CTR III, allowing for the tax-neutral disclosure of all built-in gains (including self-generated goodwill) upon relocation of a company, assets or functions from abroad to Switzerland by means of a step-up in tax basis. The stepped-up tax basis can then be amortized tax-effectively in accordance with general amortization rules. Self-generated goodwill must be amortized over a period of 10 years.
Transitional rules for change of cantonal tax status

Existing holding, domicile and mixed companies, which currently benefit from a privileged tax treatment, will be able to disclose their built-in gains either completely or partially upon the change of the cantonal tax status. Zug-based companies will be able to opt between the “two-rate model” (default rule) and the “step-up model” (prior to CTR III). Both rules will apply during a five-year transitional period following the entry into force of CTR III. The built-in gains should be determined based on a generally accepted valuation method.

Under the two-rate model, income derived from the realization of built-in gains created under the former regime will be taxed at a reduced rate during the five-year transitional period (likely until 31 December 2023). While the reduced tax rate is still to be determined, it is generally expected to be fairly low.

Alternatively, companies may apply the step-up model prior to the entry into force of CTR III. The step-up of the built-in gains in the tax balance sheet is tax-free in the amount of the exemption quota. The stepped-up tax basis can then be amortized tax-effectively over time but no longer than five years after the entry into force of CTR III (likely until 31 December 2023). Any stepped-up tax basis remaining after 31 December 2023 must be dissolved tax-neutrally.

It should be noted that the tax relief under the step-up model – in contrast to the two-rate model – is subject to the 80% overall relief limitation (i.e., at least 20% of the net profit before amortization must remain subject to cantonal income taxation). An explanatory leaflet issued by the Zug Cantonal Tax Administration on 22 September 2016 provides further information on the transitional rules governing the change of the cantonal tax status.

Financing

The corporate tax law reform shall be neutral as regards the tax revenues in the canton of Zug. The Government of the canton of Zug emphasizes that the reform will not lead to a shift of corporate tax burdens to private individuals.

Outlook

As the public vote on CTR III at the federal level will likely take place in February 2017, the Government of the canton of Zug will consult again on its strategy thereafter. It is expected that the final proposal will be submitted for consultation in April 2017. Consultation by the cantonal Parliament is planned for 2018. The target date for the entry into force of the new law is 1 January 2019.

1 See EY Global Tax Alert, Swiss Parliament approves Corporate Tax Reform III, dated 17 June 2016. Further information on Swiss Corporate Tax Reform III is also available under www.ey.com/ch/CTR-III.
Canton of Geneva releases plan for local implementation of Corporate Tax Reform III

The Swiss Corporate Tax Reform III ("CTR III") foresees the replacement of certain tax regimes with a new set of internationally accepted measures. The legislative changes will go along with broad reduction of headline corporate tax rates and will ensure that Switzerland remains attractive for multinational corporations in a post-base erosion and profit shifting ("post-BEPS") environment by providing planning certainty for the future and ensuring compliance with international taxation standards.

On 17 June 2016, the Swiss parliament adopted the final CTR III package to strengthen Switzerland's attractiveness as a business location. The new legislation will be subject to a public vote, which will likely take place in February 2017, and is expected to become effective on 1 January 2019.

The cantons are required to adjust their cantonal tax laws in accordance with CTR III. Some measures are mandatory and must be implemented by the cantons and others are optional. The cantonal tax rate reduction is at the sole discretion of the canton. Each canton will, therefore, implement the CTR III at cantonal level individually by tailoring its cantonal tax legislation to its specific needs and circumstances.

On 30 August 2016, the government of the canton of Geneva ("Geneva government") presented its strategy for the implementation of CTR III into cantonal law and opened a consultation procedure on the proposal. The plan includes, among others, the introduction of a patent box as well as increased deductions of R&D expenses. The key feature of the proposal is a substantial reduction of the headline tax rate from currently 24.2% to 13.49% (including federal tax).

In order to maintain its attractiveness as a business location, the canton of Geneva plans the following core measures for the local implementation of CTR III:

**Tax rate reduction**

As part of its CTR III strategy, the Geneva government proposes to reduce the corporate income tax rate from currently 24.2% to 13.49% of pre-tax income (including federal tax). During a transitional period of five years, starting from the entry into force of CTR III (likely 1 January 2019), the Geneva government plans to levy an additional 0.3% on the cantonal income tax rate in order to foster innovation and entrepreneurship as well as to fund certain cultural and educational projects.

In addition, it is envisaged to increase the employers' contributions on salaries by 0.22% in order to fund specific projects that seek to improve conditions of employees with families as well as public transportation.

**Patent box and R&D super deduction**

The Geneva government intends to implement tax reform measures that stimulate innovation and research. Therefore, a patent box regime as well as R&D super deductions would be introduced at cantonal level. Geneva plans to provide the full range of tax relief under these incentives. Patent box income should be eligible for a cantonal tax relief of up to 90% and qualifying R&D expenses should be eligible for a cantonal tax deduction of up to 150%.

**Step-up and two-rate system**

A step-up in basis will be possible upon migration of an enterprise, assets or functions to Switzerland in accordance with the federal CTR III regulations.

The federal rules also foresee a mandatory introduction of a “two-tax-rate model” during a five-year transitional period for companies that benefitted from a preferential cantonal tax regime. Under this system, income derived from the realization of built-in gains created under the former regime are taxed at a reduced rate (at the discretion of the cantons) during the transitional period. The Geneva government proposes to limit the benefits from a step-up upon change of tax status for Geneva based entities by adhering to a minimum overall tax rate of 13%.

**Notional interest deduction**

The Geneva government does not plan to introduce a notional interest deduction ("NID") on surplus equity at cantonal level. According to the government, this measure would generate a significant shortfall of tax revenues for the canton of Geneva and would mainly benefit companies that already would see their tax burden lowered because of the substantial tax rate reduction. Irrespective of this, the NID on equity will be available at federal level.

**Limitation of cantonal tax relief**

The overall tax relief resulting from preferential cantonal tax measures (patent box and R&D super deduction) shall be limited in a way that profits are taxed at a minimum rate of 13% (including federal tax). The Geneva government is confident that such minimum tax rate of 13% of pre-tax income will be viewed as competitive for both taxpayers already present in the canton of Geneva and potential future investors. It should be taken into consideration that the NID at federal level may reduce the effective tax rate to as low as 6%.
Annual equity tax (capital tax)

Last but not least, the Geneva government announced its intent to enable the full creditability of the cantonal income tax against the annual equity tax (capital tax), while the credit is currently limited to approx. CHF 15,000. It is further planned to introduce targeted capital tax reductions on the portion of the company’s equity relating to participations, patents and similar intangibles as well as intercompany loans. Such equity should only be taxed at a reduced rate of 0.001%.

Overview

The forthcoming tax rate changes for Geneva resident corporate taxpayers can, as per the strategy announced by the Geneva government, be summarized as follows:

<table>
<thead>
<tr>
<th>Headline income tax rates (on pre-tax income)²</th>
<th>2016</th>
<th>2019³</th>
<th>2024</th>
<th>Minimum tax rate from 2019 (before federal NID)</th>
<th>Minimum tax rate from 2019 (after federal NID)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ordinary tax rate</td>
<td>24,16 %</td>
<td>13,79 %</td>
<td>13,49 %</td>
<td>13 %</td>
<td>6 %</td>
</tr>
<tr>
<td>Holding company</td>
<td>7,8 %</td>
<td>13,79 %</td>
<td>13,49 %</td>
<td>13 %</td>
<td>6 %</td>
</tr>
<tr>
<td>Mixed company</td>
<td>9,2 % - 11,61 %</td>
<td>13,79 %</td>
<td>13,49 %</td>
<td>13 %</td>
<td>6 %</td>
</tr>
</tbody>
</table>

Outlook

Geneva’s proposed CTR III strategy is currently subject to a public consultation procedure which will conclude on 14 October 2016. Following the consultation procedure, a draft bill governing the proposed cantonal tax law changes will be submitted likely in November 2016 to the Geneva parliament for approval. The consultation procedure should now be seized by the various stakeholders as an opportunity to favorably influence the cantonal reform package in Geneva.

It is expected that the entire CTR III legislative package will enter into force on 1 January 2019 at both federal and cantonal level.

¹ See EY Global Tax Alert, Swiss Parliament approves Corporate Tax Reform III, dated 17 June 2016. Further information on Swiss Corporate Tax Reform III is also available under www.ey.com/ch/CTR-III.

² The following should be noted:
   • Date of anticipated entry into force of CTR III is 1 January 2019;
   • Dividends and capital gains from qualifying participations remain subject to participation exemption;
   • 2019 and 2024 tax rates represent expected headline tax rates (federal and cantonal/communal corporate income taxes) of a Geneva resident entity (company or branch) without considering any additional tax relief available post-tax reform (such as patent box, R&D super deduction, step-up, two-tax rate model, or federal NID).

³ Statutory corporate income tax rate of 13.49% plus additional 0.3% tax rate during first five years (2019-2023).
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Canton of Basel-Stadt releases plan for local implementation of Corporate Tax Reform III

The Swiss Corporate Tax Reform III (CTR III) foresees the replacement of certain preferential tax regimes with a new set of internationally accepted measures. The legislative changes will implement a broad reduction of the headline corporate tax rates and will ensure that Switzerland remains attractive for multinational corporations in a post-base erosion and profit shifting (post-BEPS) environment by providing planning certainty for the future and ensuring compliance with international taxation standards.

On 17 June 2016, the Swiss Parliament adopted the final CTR III package to strengthen Switzerland's attractiveness as a business location. The new legislation will be subject to a public vote, which will likely take place in February 2017, and is expected to become effective on 1 January 2019.

The cantons are required to adjust their cantonal tax laws in accordance with CTR III. Some measures are mandatory and must be implemented by the cantons and others are optional. The cantonal tax rate reduction is at the sole discretion of the cantons and the notional interest deduction is not mandatory at the cantonal level. However, the canton of Basel-Stadt has decided that the total tax rate is to be reduced from the current maximum rate of 22.18% to approximately 13% (including federal tax). The capital tax rate is to be reduced to 0.1% with effect for all legal entities (today's capital tax rate for ordinary taxed legal entities is 0.525%). In addition, a further capital tax reduction on the company's net equity related to participations, patents and similar intangibles as well as intercompany loans shall be introduced.

Patent box and renouncement of research and development (R&D) super deduction

A critical element of CTR III for the canton of Basel-Stadt is the introduction of the patent box. The patent box will only be available at the cantonal level and the maximum level of permissible tax relief for income related to the patent box has been set at 90%. According to the Government of the canton of Basel-Stadt, the introduction of a so-called R&D super deduction is not planned as it is thought that the cantonal tax relief limitation of 40% (see below) may not support a further relief. Also, the expected additional shortfall in tax revenues as well as the non-consideration of the R&D super deduction in the national revenue sharing have been mentioned as support for the non-introduction.

Notional interest deduction

The introduction of the notional interest deduction is not mandatory at the cantonal level. However, the canton of Basel-Stadt plans to introduce this instrument to enable corporations to deduct notional interest expense on surplus equity in addition to the deduction of interest expense paid on debt. From a tax standpoint, debt financing and equity financing will be treated equally, as under the new regime notional interest expenses on equity will also be tax deductible.

Limitation of cantonal tax relief

According to federal law, the total tax relief on the basis of the patent box, the R&D super deduction and the notional interest deduction may not exceed 80% of the taxable profit (before offsetting tax loss carry-forwards and without considering the net income from investments). The cantons are free to introduce a lower reduction of taxable profits. The Government of the canton of Basel-Stadt has decided that the total reduction related to the patent box and the notional interest deduction shall not exceed 40% of the taxable profit. Consequently, the minimal corporate income tax rate will amount to approx. 11% (including federal tax).

Further measures and financing

For individuals the partial taxation on dividend income is foreseen to be increased from the current quota of 50% to the rate of 80%. One of the reasons is the fact that the federal law foresees a cantonal introduction of the notional interest deduction only in cases where partial taxation of dividend is set at a minimum of 60%. Also, considering that ordinary corporate tax rates are to be reduced, the economic exposure to double taxation of distributed profits is expected to remain at the same level. In the case of a transition from privileged taxation to ordinary taxation, the canton of Basel-Stadt intends to set the cantonal rate for the taxation of undisclosed reserves at 3% (so-called “two-tax rate model”).
By applying the two-tax rate model, an abrupt increase of the income tax burden is avoided during a transition period of five years.

The draft bill of the canton Basel-Stadt contains additional measures that are not directly related to CTR III but do have a link to the taxation of corporations and legal entities. Those measures concern tax allocation in an international context, the so-called scientific research reserves as well as the taxation of legal entities with non-commercial purposes. In the canton of Basel-Stadt, a CTR III-related shortfall in tax revenues is expected. However, due to adjustments in the national revenue sharing the expected shortfall should be partly covered.

Outlook
The public consultation process in the canton of Basel-Stadt is to end on 15 December 2016. Thereafter, the Parliament of the canton of Basel-Stadt has to decide on the implementation of CTR III. At federal level, the referendum against the federal bill is already underway and public vote is expected to take place on 12 February 2017. It cannot be excluded that at the cantonal level the referendum followed by public vote will be launched as well. The target date for the entry into force of the entire reform package is 1 January 2019.

1 See EY Global Tax Alert, Swiss Parliament approves Corporate Tax Reform III, dated 17 June 2016. Further information on Swiss Corporate Tax Reform III is also available under www.ey.com/ch/CTR-III.
The Swiss Corporate Tax Reform III (CTR III) foresees the replacement of certain preferential tax regimes with a new set of internationally accepted measures. The legislative changes will implement a broad reduction of the headline corporate tax rates and will ensure that Switzerland remains attractive for multinational corporations in a post-base erosion and profit shifting (post-BEPS) environment by providing planning certainty for the future and ensuring compliance with international taxation standards.

On 17 June 2016, the Swiss Parliament adopted the final CTR III package to strengthen Switzerland’s attractiveness as a business location. The new legislation will be subject to a public vote, which will likely take place in February 2017, and is expected to become effective on 1 January 2019.

The cantons are required to adjust their cantonal tax laws in accordance with CTR III. Some measures are mandatory and must be implemented by the cantons and others are optional. The cantonal tax rate reduction is at the sole discretion of the canton. Each canton will, therefore, implement the CTR III individually by tailoring its cantonal tax legislation to its specific needs and circumstances. Federal and cantonal tax holidays are not affected by the reform and will continue to be available in Switzerland.

On 24 August 2016, the Government of the canton of Basel-Land disclosed its strategy for the implementation of CTR III in the canton of Basel-Land. The main objective is an implementation of a well-balanced tax reform. Inter alia, the plan includes the introduction of the patent box as well as the research and development (R&D) super deduction. Additionally, the corporate income tax rate will be gradually reduced to approximately 14% (including federal tax) over a period of five years.

In order to maintain its attractiveness as a business location, the canton of Basel-Land plans the following core measures for the local implementation of CTR III:

**Tax rate reduction**

The corporate income tax rate is to be gradually reduced over a period of five years from the current maximum rate of 20.7% to approximately 14% (including federal tax). The capital tax rate is to be reduced to 0.155% with effect for all legal entities (today’s capital tax rate for ordinary taxed legal entities is 0.375%). In addition, a further capital tax reduction on the company’s net equity related to participations, patents and similar intangibles as well as intercompany loans shall be introduced.

**Patent box and R&D super deduction**

Another important element of CTR III for the canton of Basel-Land is the introduction of the patent box. The patent box will only be available at the cantonal level and the maximum level of permissible tax relief for income tax related to the patent box has been set at 90%. According to the Government of the canton of Basel-Land, an introduction of a so-called R&D super deduction is planned whereby the reduction will be less than the 150% that would be possible based on the federal law.

**Notional interest deduction**

The introduction of the notional interest deduction is not mandatory at the cantonal level. The Government of the canton of Basel-Land has decided not to implement the notional interest deduction into cantonal law.
Limitation of cantonal tax relief

According to federal law, the total tax relief on the basis of the patent box, the R&D super deduction and the notional interest deduction may not exceed 80% of the taxable profit (before offsetting tax loss carry-forwards and without considering the net income from investments). The cantons are free to introduce a lower reduction of taxable profits. The Government of the canton of Basel-Land has decided that the total reduction related to the patent box and the R&D super deduction shall be set at 50%-70% of the taxable profit.

Further measures and financing

In the canton of Basel-Land, a CTR III-related shortfall in tax revenues is expected. Therefore, the canton of Basel-Land plans increasing the partial taxation of dividend income for individuals from the current quota of 50% to 60%. Also, the cantons will receive an increased portion of the federal income tax (today 17% to 21.2%), which should partly cover the shortfalls.

Outlook

The strategic approach presented by the Government of the canton of Basel-Land on 24 August 2016 is the basis of the draft bill to be addressed to the Parliament of the canton of Basel-Land in February 2017. At the federal level, the referendum against the federal bill is already underway and public vote is expected to take place on 12 February 2017. In the canton of Basel-Land, the public vote on the cantonal bill will take place on 23 September 2018. The target date for the entry into force of the entire reform package is 1 January 2019.

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1 See EY Global Tax Alert, Swiss Parliament approves Corporate Tax Reform III, dated 17 June 2016. Further information on Swiss Corporate Tax Reform III is also available under www.ey.com/ch/CTR-III.
This article aims at providing an update of the recent VAT case law of the Federal Administrative Court that might be of interest for holding companies.

Preliminary comments
In two recent decisions (A-1668/2015, A-1679/2015) the Federal Administrative Court confirmed the application of the practice of the Swiss Federal Tax Administration, Main Division VAT (SFTA) regarding the estimation of the costs for strategic management of the group. In one of the cases the re-assessed (and not recoverable) VAT amounted to almost CHF 4 million for a 5 years period. Against both decisions appeals have been filed with the Federal Court.

The SFTA’s practice
The SFTA considers that if a holding company does not have own employees, the services for strategic lead of the group are provided by a group company (in Switzerland or abroad). When these shareholder costs are not re-charged and no detailed and reliable data are available, the SFTA applies a lump-sum method to assess the value of these deemed services (i.e. 2‰ of the total assets of the holding company in case of a family or an interim holding company and 3‰ in all other cases). Therefore, if a holding company’s assets amount for example to CHF 10 million, the VAT due on the deemed services for strategic management of the group amounts to CHF 1’600 resp. 2’400 per annum. If the holding company is not VAT registered, the re-assessed VAT remains a final burden.

The Federal Administrative Court’s decision
The Federal Administrative Court validated the SFTA’s methodology in its recent decision and considered that the burden of proof is with the holding company when it has failed to book or document the shareholder costs. In such a case, the SFTA does not have to prove anymore that the holding company is in charge of the strategic management of the group (and that it has incurred costs in relation to this task), but the holding company must bring the evidence that it is in fact not involved in strategic management of the group.

When the holding company fails to provide sufficient evidence, the SFTA is entitled to apply the lump-sum method. In this case, the holding company will not be entitled to dispute the lump-sum method by considering that it leads to a clear excessive tax disadvantage since it initially failed to provide complete reliable and actual data.

VAT risk for Swiss based holding companies
The impact of the SFTA’s practice, which has been confirmed by the Federal Administrative Court, should not only be considered by pure Swiss structures but also by multinational structures including Swiss-based interim holding companies without own employees. The VAT risk related to irrecoverable input VAT can be mitigated by simply registering a Swiss based holding company for VAT purposes. However, such voluntary VAT registration is possible within the current tax year only and not for the whole limitation period of five years.
Turnover and input VAT reconciliation, mandatory by law and conclusion of the tax period

Since the revision of the VAT Act in 2010, companies registered for VAT purposes in Switzerland are legally obligated to prepare a turnover and input VAT reconciliation for the past fiscal year in the context of drawing up the annual accounts. At the end of August, the deadline expires for the submission of all corrections for those companies for which the fiscal year is the same as the calendar year.

Conclusion of the (VAT) fiscal year through turnover and input VAT reconciliation

Errors in VAT returns for the ongoing year are corrected on the basis of adjustments and declared to the Swiss Federal Tax Administration (SFTA).

Corrections due to differences arising from the turnover and input VAT reconciliation in the context of finalization must be reported using an annual correction return.

In addition to turnover reconciliation, a (separate) input tax reconciliation must also be prepared. In the case turnover and/or input tax that has been declared incorrectly an annual correction return has to be filed with the SFTA.

The corrections must be submitted within 180 days after the end of the relevant fiscal year (Art. 72 of the VAT Act); a period of 60 additional days remains for formally notifying the SFTA. For all companies for which the fiscal year 2015 corresponds to the calendar year 2015 and for which corrections must be made, the annual correction return must therefore be submitted by end of August 2016. The annual correction return only declares the differences to be corrected. If no correction return is necessary or if it is wrongfully not submitted, this is considered by the SFTA as an implicit declaration by the taxable parties that the VAT returns submitted in the past fiscal year are correct (final).

Formal requirements for turnover reconciliation

The VAT Act sets out various requirements that must be satisfied by the turnover reconciliation (Art. 128 para. 2 of the VAT Ordinance). In general, however, it can be said that the reconciliation is used to demonstrate to the SFTA that the relevant revenue (all revenue types must be reconciled) declared in the fiscal period under consideration corresponds to the accounts in the statutory annual financial statements in accordance with the type of revenue. It must also be ensured (by means of random sampling) that an audit trail exists and the revenue types are assessed from a VAT perspective.

The law does not stipulate any particular file format for turnover reconciliation, but Excel is the most commonly used.

The prepared reconciliation can be used not only to detect and correct any missing amounts owed to the SFTA, but also to identify tax declared in excess or not claimed input tax, which can then be claimed in favour of the company via the corrected return.

Consequences if no output tax reconciliation is presented

According to the VAT Act, the SFTA may at any time ask companies subject to tax to provide a turnover and input tax reconciliation (Art. 128 para. 1 (d) and (e) of the VAT Ordinance). During VAT inspections, the reconciliations also serve as the starting point for the auditor to gain an initial overview of the various revenue types. A properly prepared reconciliation can thus create a good first impression, and experience has shown that questions on the part of the SFTA may then be answered in a quicker, more professional and conclusive manner. If all necessary audit steps related to the reconciliation have been carried out, and any differences have been clearly documented, there is little reason to expect that any errors subsequently identified in a VAT audit by the SFTA will be qualified as criminally relevant. If, despite a request by the SFTA, no output tax reconciliation is provided or if it is not properly prepared, the tax liability may be estimated (Art. 79 of the VAT Act, best judgement assessment) and a fine may be imposed as a penalty.
BREXIT – The EU Referendum from a people perspective

In June 2016 a majority of 51.9% of voters agreed that the UK should leave the European Union. This was followed by political change including a new Prime Minister, Theresa May, being appointed with the responsibility to negotiate the UK’s exit of the European Union. The effective change will be in place as soon as the UK applies article 50 of the Lisbon treaty and submits the official leave application to the European Union. The official leave application will open a 2 year period of discussions and negotiations between the UK Government and the EU Commission. The treaty provides a 2 year time frame for negotiations which could be cut down or extended. It is important to understand that the leave vote is not triggering an immediate change and that the exit will not be processed quickly. In 2017/2018 when a deal has been reached between the UK and the EU, the outcome will be subject for approval by the Council of Member states after ratification by the EU Parliament.

Possible impact from a people perspective in regard of social security

From a short term perspective there will not be a change regarding social security. The UK and European law does not change with immediate effect. Specifically this means that EU assignees working in the UK are able to file a A1 certificate which exempts them from National Insurance contributions. UK citizens working in the EU will remain subject to the current EU-regulation which exempts them from a host country social security liability. It depends whether there will be a complete exit from the union or a solution could be found in the form of joining the EEA. Joining the EEA would likely lead to a minimal change of the current social security practice and the same legal framework would be kept.

A complete exit would have a significant impact as old social security treaties which were put in place 1950 would require to be amended in order to meet the expectation of the modern business environment. The process of re-negotiating social security agreements with different countries could take much more time than the article 50 transition period. For companies assigning international employees this would have a significant impact as current global mobility policies make sure that the home country social security contributions can be continued. If there will be a potential social security liability in the respective host country this would lead to additional challenging and expensive compliance obligations for companies.

Possible impact from a people perspective in regard of immigration

At the moment it is certainly not clear how UK immigration will look after exit from the EU and it will definitely take some time until it has been decided whether free movement continues or not. The first thing to look at is what the voting campaigns were saying. Especially in the leave campaign, immigration was a hot topic and a lot of people voted for the exit in order that the UK is able to control EU- and Non-EU immigration. It has to be decided what relationship will the UK have after leaving the European Union and of course there are many different options how this will look like. One of the options could be that the UK will join the EEA (European Economic Area) and therefore maintain free movement or that there will be a free trade agreement (similar to the Swiss model) negotiated that would not necessarily require the free movement. In a short term view it is clear that the free movement will continue and not only until article 50 has been triggered but also until the official exit is given and even after could so. This means that European citizens will be able to work in the UK until it exits the EU (and vice versa).

What needs to be considered from a company perspective?

Immigration cost and culture

It is important to consider that in the future the cost for immigration will be an important factor while planning the future workforce after the exit.
A further factor will be to maintain a cultural and dynamic diversity across their workforce. A balance should be found between controlling immigration costs versus maintaining corporate culture and diversity.

**Immigration data and analysis**

Previously there has been no need for companies to track European or British workers, as for example this is currently the case for non-European nationals working in the UK. The information on this section of the workforce is now the key to plan for the future, as the possibility is given that the EU British citizens will require work permits to work in the EU (and vice versa). This group of workforce needs to be identified for future trainings and hiring objectives as well as personal assessments of those which are already employed.

**Immigration and workplace assessments**

At this moment it is important for companies to review their current expatriate workforce whether the right to remain in the host location still exists. This could be relevant for all of the respective workforce regardless of seniority, skill set and number. For Senior staff it may be required to analyze their situation and the possible options in terms of permanent residency, citizenship or if they would qualify for a visa under the current rules for non-European nationals. It is possible that the immigration policy for non-European nationals will become stricter during the transition period.
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