Dear reader

US tax reform was the hot topic in tax in the first quarter of 2018. We have put together the most important aspects of the reform for Swiss entities with activities in the US.

In addition, we are commenting on the partial revision of the Swiss VAT Act.

In this issue of our quarterly newsletter we inform you about these and further relevant tax developments.

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The US tax reform (or “Tax Cuts and Jobs Act”) was enacted on 22 December 2017 with most of the international provisions in force since the beginning of 2018. The innovations in corporate taxation contained therein also have a major impact on Swiss groups and their US subsidiaries. The US tax reform includes both tax-reducing and tax-increasing measures, which generate new planning opportunities for Swiss groups with operations in the US.

Overview

The US tax reform is the most extensive reform of the US tax system in the past 30 years. The reform is intended to make the country more competitive in the international tax landscape and create location attractiveness by incentivizing investments in the US thus creating more jobs. At the same time, it may be viewed as less attractive for multinational companies deemed to generate “excess” profits abroad.

The business segment of the US tax reform contains an overall reduction in the corporate tax rate combined with various base-broadening measures.

The new regulations are complex and need to be considered in aggregate as the provisions interact with each other (e.g., FDII, immediate expensing, GILTI, limited loss offsetting and BEAT – please see the following explanations). It is therefore important to thoroughly assess the different measures and their impacts on the group in totality, before considering the implementation of any specific measures. Depending on whether the US subsidiaries of a Swiss group in turn hold participations in foreign companies (so-called “sandwich structures”), or whether the US subsidiaries do not own participations, Swiss groups will be impacted by the US tax reform in different ways.

The following illustration provides an overview of the relevant regulations.

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<th>Swiss group with sandwich structure</th>
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Tax relief measures

Reduction of corporate income tax rates

The headline feature of the US tax reform is the reduction of the federal corporate income tax rate from 35% to 21% effective for tax year beginning after 1 January 2018. Taking into account the state and local income taxes, the overall income tax burden will be in the mid-20% range which is still significantly higher than the effective tax rates in Switzerland. In addition, the minimum tax regulation (the so-called “alternative minimum tax”) will be abolished for all companies.

The US market is very important for Swiss groups. The reduction of the income tax rate makes the US more attractive in comparison to other countries. For some Swiss groups, it may be strategic to expand their activities and future investments in the US as opposed to alternative countries.

As a result of the revaluation of deferred taxes, the reduction of the US income tax rate has had a considerable one-time impact on the consolidated financial statements of many Swiss groups in financial year 2017 or 2018 (depending on the end of the financial year).

Immediate expensing

An additional incentive for investment in the US is provided by the introduction of immediate expensing of the cost of certain qualified depreciable assets made after 27 September 2017 and phased down starting in 2023. From 2023 onwards, immediate expensing will be reduced every year by 20%.

FDII

The introduction of the preference regime for the privileged taxation of income from the foreign exploitation of intangible assets (i.e., sale, rental or licensing and performance of services) will make the US a more attractive location for intellectual property, patents, licenses as well as the export of products and services abroad. If the foreign profits of a US company exceed a lump-sum return of 10%, the excess amount qualifies as foreign-derived intangible income (FDII). By way of a special deduction, the applicable effective tax rate on FDII is 13.125% (from 2018 onwards) respectively 16.406% (from 2026 onwards).

The introduction of the FDII regime is intended to promote the transfer of intangible rights or the development of intangible rights to the US. However, even lower effective tax rates can be applied in various Swiss cantons1 – even if not subject to a preferential tax regime. In case the IP box will be introduced under tax proposal 17 and applied, taxation would be lower than the FDII effective tax rate.

Another question is whether FDII will subsist in the international environment or whether the privileged treatment of foreign income will be regarded by the OECD as harmful “ring-fencing”. A qualification as harmful “ring-fencing” could, for example, lead to the non-granting of tax deductions by certain countries for payments to US companies taxed under FDII.

Participation Exemption

As of 1 January 2018, Swiss groups with a sandwich structure can benefit from a 100% deduction for the foreign source portion of foreign dividend income received by US subsidiaries. Conditions are that the participation of the foreign subsidiary amounts to at least 10% and the holding period of the participation is minimum one year. However, the investment deduction is not granted on capital gains recognized from the sale or exchange of stock, so-called “subpart F” income, GILTI income (see our explanations below), hybrid dividends and for permanent establishments. In addition, foreign taxes on these dividend yields can no longer be deducted from US taxes. Foreign withholding taxes thus become a final burden, which may result in new structural optimization possibilities. It should also be kept in mind that dividend yields can be subject to local state taxes despite the deduction of dividends for federal tax.

Due to the various restrictions on the participation exemption, the extent to which the introduction of the participation exemption for Swiss groups will imply a facilitation of the repayment of liquid assets from US sub-holding structures and a reduction of the associated US tax burden can only be assessed on the basis of a detailed analysis of the corporate structure.

1(e.g., Zug, Lucerne, Obwalden, Nidwalden, Schaffhausen, Schwyz).
Tax-increasing measures

A partial, reciprocal financing of the tax reductions of the US tax reform is realized by an expansion of the tax base and the restriction of various tax deductions, which will be discussed in turn.

Limitation of offsetting of losses

The maximum deduction for net operating loss carryforwards arising in tax years beginning after 2017 is limited to 80% of the taxable profits. However, losses generated after 2017 can be carried forward indefinitely. Losses generated prior to 2018 are still subject to a 20-year carryforward period with no limitation to annual income offsets.

For Swiss groups with US subsidiaries that have loss carryforwards or are expecting losses in the future, the planning of income and expenses (e.g., amortization of assets or financing) in the US is therefore likely to become more important due to the limited annual loss offsetting.

Limitation of interest deductibility

With the limitation of interest deduction, net interest costs (regardless of whether paid to third parties or other group companies), are now only permitted up to an amount of 30% of the “adjusted taxable income” (similar to EBITDA). Any excess amount can be carried forward indefinitely. From 2022 onwards, the definition of “adjusted taxable income” will be tightened to include deductions for depreciation, depletion and amortization thus making the 30% limitation much lower.

These new regulations are only relevant for Swiss groups if they have US subsidiaries with a turnover of at least US$25 million (on average over a three-year period). In this situation, it is recommended to analyse whether the restriction on interest deductions applies and, if necessary, whether the financing structures need to be modified (e.g., review of interest rates, increased financing by means of equity capital, measures to increase EBITDA or EBIT).

BEAT

The “Base Erosion and Anti-abuse Tax” or “BEAT” applies to companies with a turnover of more than US$500 million on a three-year average and where the tax-deductible payments to affiliated companies account for at least 3% of the total operating expenses (2% for banks and securities dealers). BEAT is intended to create a minimum taxation if a US company significantly reduces its domestic profits via payments to foreign affiliates. Base erosion payments includes any amount paid or accrued by the US taxpayer to a foreign related party with
respect to which a deduction is allowed including interest and license payments, rent, service fees with a surcharge or costs from the acquisition of usable assets and their depreciation (but excludes costs for purchased goods or services without markup). A tax rate of 5% (10% as of 2019; 12.5% as of 2026) will be applied to this assessment basis in 2018 to determine the potential minimum tax.

Many Swiss groups with US subsidiaries are likely to be affected by the new BEAT regulation. For example, if US companies are financed through loans from a Swiss or other non-US company, or if the intangible rights are held outside the US (e.g., in Switzerland) and the US company provides license payments. It is therefore recommended to analyze and possibly adapt the financing, licensing and service structures with US companies with regards to BEAT. As an example, if the US-related licenses or the performance of intra-group services could be transferred to the US, one possibility could be the optimization of the value chain and transfer pricing. In connection with the financing of US companies, BEAT taxation could, in principle, be reduced by taking on debt in the US as opposed to intercompany financing. However, this possibility could be subject to limitations due to the interest deduction restriction described above. The combination of BEAT and the restriction on interest deduction creates incentives to finance investments in the US, increasingly by means of equity capital or convertible bonds.

**Anti-hybrid regulation**

The anti-hybrid regulation denies tax deductions for interest or licensing expenses to affiliated companies abroad or in connection with hybrid instruments, provided that the affiliated company does not have to declare the payment received as income or provided that it could claim the expense twice. Further regulations for the introduction of certain hybrid structures may be implemented.

Swiss groups should analyze whether they have damaging hybrid structures or hybrid instruments with US subsidiaries (e.g., REPO structures, hybrid loans, loans from a Swiss finance branch with notional interest deduction) and, if necessary, modify their structures accordingly.

**Transition tax**

In the course of the introduction of the participation exemption on foreign dividends (see explanations above), a regulation was created for the taxation of previously untaxed accumulated post-1986 foreign earnings & profits. With the so-called “transition tax” such profits are subject to a mandatory one-time tax at reduced tax rates of 15.5% for cash and cash equivalents and 8% for other assets, irrespective of an actual distribution. The tax payment can be made over a period of up to eight years. The transition tax can therefore lead to high income tax payments without distributing liquid assets into the US. Basically, all Swiss groups with sandwich structures are affected by the transition tax.

**GILTI**

The introduction of the taxation of “global intangible low-taxed income” or “GILTI” of foreign group companies, adds a new category to the US “CFC-Rules” (US-Controlled Foreign Corporations Rules). Only Swiss groups with sandwich structures are affected. Pursuant to the new regulation beginning in 2018, the aggregated income of all foreign subsidiaries of the US company covered by the CFC taxation will be included in the US CFC net tested income basis, so far as it exceeds the deemed “market-standard” 10% return on qualified business tangible assets. The highest effective tax rate on GILTI is 10.5% for the time being and 13.125% from 2026 onwards. In addition, up to 80% of foreign tax paid abroad (subject to limitations) may be available to offset US tax on GILTI.

The introduction of GILTI makes it unattractive for Swiss groups to hold non-US group companies under a US sub-holding structure, as the CFC companies of the US subsidiary are thus subject to additional global minimum taxation in the US. However, there are also possibilities for minimize GILTI taxation by transferring depreciable assets or by optimizing the value-added chain.

**Concluding observations**

Swiss groups with subsidiaries in the US should model the impact of the US tax reform immediately to understand the implications on their business model (e.g., with regard to the exploitation of intangible assets, the goods and value-added chain, the adjustment of financing and capital structures, the deductibility of interest and license payments, the use of tax loss carryforwards) as well as on current and planned investments and acquisitions. This analysis shall also take into account the compatibility of the new rules with existing international agreements (double taxation treaties) and conventions (BEPS reports) or national measures (tax proposal 17). In order to analyze or estimate the impact of the aforementioned aspects on the group as a whole, with regard to opportunities and risks, we recommend that a “health check” analysis be performed. This will illustrate how the new regulations interact and simultaneously provide a basis for the development of alternative concepts.

For example, the question may arise of whether it would be worthwhile to relocate intellectual property that is currently being used in Switzerland to the US (which triggers exit tax in Switzerland) in order to avoid BEAT and GILTI and to benefit from FDII. The sustainability of the US tax reform must also be taken into account in future planning, as it is already known that this will reduce tax revenues considerably and thus put additional pressure on the already tight US fiscal budget. From this point of view, it may well be the case that, for example, in two years’ time, certain benefits may be modified to the disadvantage of taxpayers. An adjustment or repeal of the new rules is also conceivable if the reform does not bring the desired economic growth or if a change of government control follows.

Coming back to the aforementioned example, a planned shift of the mentioned intellectual property back to Switzerland (for the purpose of using the Swiss IP-Box) would in turn trigger a potentially expensive exit tax (this time in the US).

Our tax experts at EY will be pleased to assist in developing sustainable solutions for the US tax reform. If you have any further questions, please do not hesitate to contact us:

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According to the established jurisprudence of the Swiss Federal Supreme Court, a tax assessment does not justify the protection of legitimate expectations. Thus, taxpayers cannot rely on the fact that the tax administration assessed the same issue differently the previous year.

In the leading case of the Administrative Court of St. Gallen dated 20 December 2016 (decision no. B 2015/155) and outlined in the Tax News issue of Summer 2017, the legitimate expectation of a self-employed person whose losses had been offset against other income for years, was protected. The court held, on account of particular circumstances, that the tax administration had been obliged to notify the taxpayer that the activity would be presumed a non-deductible hobby in case the profitability cannot be reached in the near future. The tax authority appealed this decision to the Swiss Federal Supreme Court. The latter has now held in its decision dated 6 December 2017 (2C_107/2017) that the taxpayer does not benefit from the protection of legitimate expectations.

Facts of the case
The taxpayer and his wife have been operating a predatory bird park with adjacent kiosk and restaurant in a self-employed activity since 2001 in the canton of St. Gallen. The losses of the predatory bird park were constantly being offset against the spouses’ remaining income and were assessed definitively according to self-declaration. For the tax year 2009, the tax authorities qualified the running of the park as a (non-tax-deductible) hobby, because of the ongoing losses. Thus, the tax authorities no longer allowed the loss to be offset against other income. The taxable persons were assessed accordingly in June 2012, whereupon they subsequently took legal action. They were protected in their legitimate expectation by the cantonal legal channels in a continued assessment. The protection of legitimate expectation was based on the existence of particular circumstances, such as substantial investments in facilities, livestock as well as long-term leases and building-right agreements, which would not allow short-term liquidation.

Update Swiss Federal Supreme Court
The Swiss Federal Supreme Court has now annulled this welcoming decision of the Administrative Court. It agrees with the decision of the Administrative Court only as far as it does not qualify the operation of the predatory bird park as self-employment but as hobby. However, the Swiss Federal Supreme Court did not agree with the opinion of the Administrative Court that, in the present case, the long-standing recognition of the losses by the tax authorities created a basis for legitimate expectations for the tax years 2009 and the followings. In the case at hand, no specific assurances were given regarding the tax treatment of the predatory bird park, which meant that there was no sufficient basis for legitimate expectations from the very beginning. Moreover, the accounting and financial statements of the respondents had been administered by accounting companies and therefore by competent persons. This should inevitably have raised the question of their future qualification as self-employed persons. A possibly dissenting opinion of the tax authorities would therefore have been apparent to the respondents. This means that an additional precondition for invoking the protection of legitimate expectations (Art. 9 of the Federal Constitution of the Swiss Confederation) is not fulfilled.

In conclusion, the Swiss Federal Supreme Court states that the intention to make a profit from an activity can only be reliably assessed after a certain observation period. This does not mean that the assessing authorities are obliged to inform the taxpayer of any deviating qualification of his activity in later tax periods, nor to grant him an adjustment period. A possible appeal on grounds of protection of legitimate expectations may only be possible if a loss-making operation is considered as self-employment over an extended period of time and if the tax authorities wait for such an unreasonable amount of time that the taxpayer is left under the impression of an ongoing acceptance of the losses. The hesitant execution of the assessment – as in the case at hand – is insufficient.
Conclusion
Whilst assessing whether or not the protection of legitimate expectation is applicable to ongoing tax assessments, the Swiss Federal Supreme Court emphasized the lack of assurances by the tax authorities and the competent representation by an accounting company. The particularly significant investments made by taxpayers, as well as a constant assessment of the ongoing loss settlement, were not regarded as a sufficient basis of trust. The Swiss Federal Supreme Court did not elaborate in greater detail on the reasoning of the lower instance that particular circumstances, such as significant investments or a continued assessment over many years, may increase the taxpayer’s trust and may have a lasting effect on the legitimate expectation. As a result of the overturn of the administrative court decision in question, the well-known federal jurisprudence continues to be applicable. Accordingly, a tax assessment in principle does not establish protection of legitimate expectations unless particular circumstances, such as assurances by the tax authorities, exist. Therefore, the taxpayer can only rarely rely on the fact that the tax administrations assessed the same issue differently the year before. Several years of acknowledgment by the tax authorities or the existence of particular circumstances in the operating activity of the taxpayer do not change this fact.
136 days after the general election, the Christian Democratic Union (CDU), Christian Social Union (CSU) and Social-democrats (SPD) agreed on a coalition agreement. As agreed in the exploratory result of 12 January 2018, a reduction in the solidarity surcharge is the largest individual tax measure.

The reduction in solidarity surcharge up to the total amount of EUR 10 billion shall take place within the legislative period leading up to 2021. Tax measures such as the increase of child benefits resp. child allowance, incentives for housing construction as well as tax incentives for research and development will be passed and have the largest financial capacity.

The Ministry of Finance, which of significance for taxation policy and has been led by the CDU for the past eight years, will be passed on to the SPD. The new minister of finance will be Olaf Scholz, who is currently the First Mayor of Hamburg.

Corporate taxes
- Support for a Common, Consolidated Corporate Tax Base (CCCTB) including minimum corporate tax rates. The new Government will seek to form a French/ German initiative concerning steps for a formation of a joint economic zone, which shall also include proposals for uniform company and bankruptcy laws.
- The initiative should also be seen as a reaction to increased international business location competition as a consequence of the US tax reform.
- Control of tax evasion, tax avoidance, unfair tax competition and money laundering in the national, European and international scope. Examination of the proposals submitted by the member states and the EU Commission.
- Introduction of measures for appropriate taxation of the digital economy including fair taxation of large digital enterprises, especially internet corporations. The companies named are Google, Apple, Facebook and Amazon.
- Full implementation of the EU-Anti-avoidance Directive (ATAD and ATAD2), which includes in particular an adaption of the German controlled foreign company legislation, added rules governing hybrid structures and amendments to the German interest limitation framework.
- Adaption of tax incentives for research and development (R&D), in particular, for small and medium-sized enterprises, based on personnel and project costs.
- Review of whether higher depreciation rates are permitted in favor of innovative “digital economy product investments”.
- Introduction of certain benefits for start-up investments, such as temporary relief from monthly value added tax (VAT) filings,
- Improvement of the venture capital conditions by simplifying application, authorization and taxation procedures (the aim is to create a “one stop shop”), and
- A review concerning the potential introduction of other tax incentives to mobilise private venture capital beyond the existing measures.
- The close-out of certain opportunities to avoid the Real Estate Transfer Tax in share deal transactions. According to the agreement, the expected increase in tax revenue “can” be used by the States to lower their individual Real Estate Transfer Tax rates.

Taxation of Individuals
- Incremental repeal of the so-called Solidarity Surcharge (a surcharge of 5.5% on the income tax – no repeal of the surcharge is apparently considered for corporate income tax purposes): From 2021 onwards, a significant increase of the thus far very low exemption limit for individuals with a subsequent sliding zone is envisioned. This means that 90% of all solidarity surcharge payers are completely exonerated. According to the choice of phrasing, corporations, for which there currently is no free limit, are evidently not exonerated. The solidarity surcharge was initially implemented on 1 January 1995 in order to “harmonize the unequal living conditions in the new and old federal states, after the reunification and to co-finance the respective measures”.

- No increase in the tax burden of the citizens. There are no proposals for a reform of the income tax rate. However, the coalition is committed to submit a report on the development of the “cold progression” every two years and to adjust the income tax rate accordingly. In addition, review of the adaptation of the flat-rate tax allowances for people with disabilities.
- Relief for employees by restoring parity in the health insurance. Reduction of the unemployment insurance contribution by 0.3%. Relief for low-income earners with social contributions.
- Repeal of the 25% flat tax system on interest income (which would result in the taxation of interest income at ordinary progressive tax rates), if the automatic exchange of information is established as well as the prevention of circumvention.
- Expansion of electronic communication between financial authorities and citizens. Until the assessment period of 2021, the pre-filled tax declaration is being targeted for all taxpayers. The 100 most significant administrative services are to be made available online,
focusing inter alia on the fields of taxes and duties, accounting and bookkeeping.

- Spouses shall be better informed about the **factor method** for income tax purposes.
- A reduced rate of 0.5% of the domestic list price is to be considered for flat-rate company car taxation for electric vehicles.
- The introduction of a special depreciation allowance of 50%, which is limited to five years after the year of purchase, for electric vehicles that are used for commercial purposes.
- In order to improve the promotion of civic and voluntary commitment, voluntary activities shall be exempted from taxation.

**Indirect Taxes**

- Support for the introduction of a **Financial Transaction Tax** in the European context.
- Optimization of the survey and reimbursement procedure for **import-turnover tax at airports and ports**.
- **Combatting VAT fraud when trading with goods on the internet.** Operators in electronic marketplaces are to be called upon for the cancelled VAT if they do not stop the trade of unrighteous entrepreneurs via their platform. The state finance ministers had already announced a corresponding initiative this year. In addition, the platform operators shall provide information about their active traders.
- At the European level, the grand coalition wants to support the application of the reduced VAT rate for commercially traded objects of art, e-books, e-papers and other digital information media. In accordance with Art. 98(1) VAT Directive 2, Member States may provide up to two reduced rates of tax for certain goods. Without further explanation, the coalition partners also state that they are working towards achieving the “initial legislators’ promotion of the trade in art of 2014”. Furthermore, defense of the reduced tax rate for printed media.

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Partial revision of the Swiss VAT Act – VAT liability for companies in Switzerland

The partially revised Federal Act on Value Added Tax (Value Added Tax Act, VAT Act) entered into force on 1 January 2018. One of the most important and impacting changes in the scope of this partial revision concerns the requirements for a VAT liability in Switzerland. This applies both to companies domiciled in Switzerland and abroad.

Principle – Decisive turnover

According to the old VAT Act, which was effective until 31 December 2017, a company in Switzerland became mandatorily liable to register for Swiss VAT if it generated more than a CHF 100’000 turnover from taxable supplies in Switzerland within a one year period. Under the revised VAT Act, which has been in force since 1 January 2018, the annual turnover threshold of CHF 100’000 remains unchanged but now refers to the worldwide generated turnover. In other words, a turnover of CHF 1 from supplies in Switzerland can now constitute a VAT liability.

VAT liability of companies domiciled in Switzerland

The text of Art. 10(1)(b) in connection with Art. 10(2) VAT Act links a company’s tax liability to the characteristics of being domiciled in Switzerland (“registered office, domicile or permanent establishment in Switzerland”) and the achievement of an annual turnover of more than CHF 100’000 on either Swiss territory or abroad.

Whether the Swiss company also provides supplies, i.e., goods or service offerings, with Switzerland as the place of supply is no longer a decisive criterion for its tax liability. Thus, it is irrelevant whether taxable supplies are carried out in Switzerland. A Swiss company must therefore also register for Swiss VAT purposes, even if it only provides supplies that are exempt from VAT with credit (e.g., exports) but generates an annual global turnover of more than CHF 100’000 per year. Only the sole supply of VAT exempt without credit transactions (according to Art. 21(2) VAT Act), such as interest income, are harmless.

VAT liability of companies domiciled abroad

For the determination of the tax liability of companies domiciled abroad, Art. 10(1)(a) VAT Act stipulates that in addition to reaching the worldwide turnover limit of CHF 100’000 per year, it is relevant whether turnover is actually generated in connection with a taxable supply in Switzerland. In other words, a foreign company only becomes subject to a mandatory registration in Switzerland if it generates an annual global turnover of more than CHF 100’000, from which at least a turnover of CHF 1 is generated by taxable supplies.

Exemption from VAT liability

The partially revised VAT Act also allows exemption from VAT liability, although its scope of application is now severely restricted.

First of all, a company is exempt from VAT liability as long as its annual turnover does not exceed the amount of CHF 100’000 – whether it is domiciled in Switzerland or abroad. Furthermore, a foreign company can make use of the exemption if it only provides supplies that are exempt from VAT with credit (e.g., exports) or without credit (e.g., return on investment).

The exemption from tax liability for Swiss companies applies if services are provided to recipients established in Switzerland, which are taxable at the recipient of the service (Art. 8(1) VAT Act). In line with the logic of the reverse charge regulations, the recipient of the service reports VAT on the corresponding services within the scope of the reverse charge.

Companies domiciled abroad that provide telecommunications and/or electronic services to non-taxable recipients as well as services in accordance with Art. 8(2) VAT Act, are still not exempt from the obligation to register. Likewise, work on movable goods which does not qualify as a provision of services in Switzerland but rather as a supply of goods, lead to a mandatory VAT liability for foreign companies if they generate a worldwide turnover of more than CHF 100’000 per year.

For the sake of completeness, it should also be mentioned that the supply of electricity in pipelines, gas, via the natural gas distribution network and district heating through foreign companies, does not trigger a Swiss VAT liability as long as these services are provided to persons subject to VAT who are based in Switzerland.

Commencement of tax liability

According to Art. 14(1) VAT Act, the VAT liability for Swiss companies start once they commence their business activities.

Art. 14(1)b VAT Act stipulates that the mandatory tax liability for foreign companies shall commence when a supply is provided for the first time on Swiss territory, if at this point in time it can already be expected that the worldwide turnover threshold of CHF 100’000 per year will be exceeded within the next 12 months.

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3 For non-profit, voluntary sports or cultural associations or non-profit institutions, a worldwide turnover of CHF 150’000 is decisive.
If a Swiss or foreign company has not yet been subject to VAT (including 2017) due to the fact that it has not met the turnover thresholds, a registration with the Swiss VAT register must be assessed at the beginning of a new financial year (e.g., 2018) and, if required, made.

**Outlook**

The introduction of the worldwide turnover as a base for determining the tax liability of both national and foreign companies represents a change of system. The impacts are extensive and have not yet been adequately assessed in all the companies concerned. It is of critical importance to emphasize the re-charging of supplies rendered on domestic territory, but also the performance of work in movable goods in Switzerland. In the course of adapting its practice to the partially revised VAT Act, the Swiss Federal Tax Administration has also published a series of reforms concerning certain sector regulations. A representative example for this is the regulation for package tour providers. Companies based abroad, which exclusively offer such package tours and combined services in Switzerland, were able to be exempt from VAT liability until 2017. In the VAT-industry-leaflet 12 (travel agencies, health resort and tourist offices) it is now stated that there is a tax liability for these supplies (provided that the corresponding turnover thresholds are reached). Since the Federal Tax Administration is still in the process of adapting its practice, further reforms are to be expected. The vigilance of companies will therefore continue to be called for.
Tackling the “Swiss island of high prices” through import facilitations

On 20 December 2017, the Swiss Federal Council decided to unilaterally lift customs duties on imports of industrial goods. Customs duties on selected agricultural goods that are not produced in Switzerland are also expected to fall. In addition, the Cassis-de-Dijon principle is to be strengthened by reducing the exceptions to this principle for products. The measures are supposed to achieve cost savings of around CHF 900 million, which would directly benefit consumers and companies.

The Federal Council called for the examination of the “economic, financial and foreign policy advantages and disadvantages of an autonomous lifting of all import duties in the industrial sector”. Four external and independent economic research institutes were commissioned to carry out analyses of specific aspects. Based on the findings of these studies, the Federal Council has now decided to unilaterally lift import duties on industrial goods, to reduce import duties on selected agricultural goods and to achieve a more efficient implementation of the Cassis de Dijon principle.

Elimination of import duties on industrial goods

At present, there are still numerous tariff and non-tariff barriers to trade that are still in place for historical reasons, but are no longer appropriate due to globalization and the corresponding liberalization of the economy. Industrial goods are defined as all goods of the customs tariff numbers in Chapters 25 to 97 of the Swiss Customs Tariff. These tariff numbers include consumer and industrial goods such as vehicles, leather goods, personal care products, clothing as well as inputs for production processes. The unilateral duty elimination would mean that all tariff rates are set to zero. The international obligations under the World Trade Organization (WTO) or free trade agreements would remain unchanged. As a result of the tariff savings, the Confederation would lose approximately CHF 490 million (approximately US$527.2 million) in revenue, constituting 0.7% of the total federal revenue. However, 30% of this loss could be offset by higher government tax revenues as a result of higher economic growth. On average, import duties on industrial goods amount to only about 1.8%. The protective function of these duties is therefore insignificant, not in the least because the industrial goods concerned are not manufactured in Switzerland, and the elimination of customs duties, therefore, does not endanger the domestic industry.

As a result, companies that purchase inputs from abroad could import at a lower cost of production and export them more cheaply after the production stage has taken place or, depending on the industry, achieve higher margins. The export industry and the import industry would thus benefit greatly from these measures. At company level, an increase in the number of jobs would be possible due to higher production output. This would also reduce “shopping tourism” abroad.

The reduction of customs duties to zero would, in addition to the financial advantages, result in a major administrative relief for importing companies in Switzerland in connection with the customs clearance of goods in cross-border traffic. For example, the cost of applying free trade agreements, including obtaining and presenting a valid proof of origin for duty-free importation, or the use of special customs procedures would no longer be necessary, as no more customs duties would be due at any time. The term “special customs procedures” includes, for example, the customs procedure of temporary importation or the customs procedure of inward processing, with which companies benefit temporarily from tariff relief or exemption if the goods are then exported from Switzerland after a certain period of time. Due to strict procedural regulations, carrying out these operations constitutes enormous efforts for both the Swiss Federal Customs Administration and companies. However, this elimination of customs duties would not affect steering levies or excise duties, such as the mineral oil tax or the volatile organic compounds (VOC) incentive tag.

The Federal Customs Administration also benefits from these measures, as the absence of administrative tasks such as taking samples to check the declared tariff number, would then be unnecessary and the correct classification would no longer be of central importance for the correct levying of customs duties. In principle, this would result in a more efficient and streamlined customs clearance for all parties involved.

Reduction of import duties on selected agricultural goods

Consumer food prices in Switzerland are on average 60% higher than in the European Union. The dismantling of import duties on products that are not produced in Switzerland at all, such as bananas or other exotic fruit, would in no way jeopardize Swiss agricultural production. Consumers in Switzerland could, therefore, benefit from a reduction in customs duties and the associated cheaper imports of such agricultural products. The customs duties on agricultural products that are also produced in Switzerland would remain unchanged.
Cassis-de-Dijon principle

In accordance with the Cassis-de-Dijon principle, goods can be imported into Switzerland if they have been manufactured and legally marketed in accordance with the regulations of the European Union. The Cassis-de-Dijon principle does not apply to products that are subject to mandatory registration or a prior import license. There are currently 24 exceptions to categories of goods which, despite the Cassis-de-Dijon principle, do not benefit from this simplification. These include pesticides, pharmaceuticals, war material, chemicals, etc., The Federal Council has decided to abolish regulations on the energy efficiency of household appliances and the declaration of wood products in the scope of these exceptions, constituting a reduction in the number of exceptions.

The proposal also provides for the replacement of the requirement to obtain authorization for foodstuffs in accordance with the Cassis-de-Dijon principle with a digitized notification procedure. This will make it easier to import foodstuffs and at the same time cheaper for companies, which in turn would lower sale prices in Switzerland. Moreover, it would also be expected that this implementation would increase the diversity of products in Switzerland.

Conclusion

Reducing tariff and non-tariff barriers to trade would most likely have positive effects for Switzerland as a business location and, according to the study, would result in financial savings, efficiency gains through leaner administrative processes and growth of the Swiss economy.

It remains to be seen how the various stakeholders will react to the Federal Council’s proposal. The consultation period for the package of measures proposed by the Federal Council runs until 23 March 2018, but the effective implementation of these import facilitations is not expected before 2020.
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