

Tax Package 17: Federal Council presents basic parameters of the planned reform

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At its meeting on 9 June 2017 the Federal Council confirmed the basic parameters of the planned reform of Swiss corporate taxes, which the Steering Committee sent as a recommendation to the Federal Council and already introduced in a press release on 1 June 2017. The Tax Package 17 (SV 17) has three main objectives: first the aim is to secure Switzerland's attractive status as a business location. In addition the reform intends, in view of the changed international environment, also to continue to preserve the acceptance of the Swiss tax system. Finally SV 17 is intended to secure sufficient tax revenues at all levels. These objectives are in principle identical with those of Corporate Tax Reform III (CTR III), which was rejected by the Swiss voters on 12 February 2017 with a share of the vote of almost 60%. SV 17 will therefore be more balanced. Compared with CTR III the special rules will be drawn up more restrictively and the interests of the cities and communes will carry more weight. Specifically the Federal Council proposes the following measures:

- **Abolition of the special tax regimes**, which are no longer accepted internationally (cantonal holding status, taxation as a mixed company or domiciliary company as well as Principal status and Swiss finance branches at the federal level);
- **Introduction of a patent box** meeting the OECD Standard at cantonal level;
- **Optional cantonal additional deduction of 50% for research and development costs**, incurred in Switzerland (based on R&D salary costs plus a mark-up);

- **Statutory provisions** in relation to the tax consequences of **entering** or **exiting** Swiss tax liability and **transitional rules** limited to **5 years** when changing from a special regime to ordinary taxation;
- Whether there is room in the new reform package for the optional cantonal introduction of a deduction for surplus capital is still undecided. This appropriate measure would reduce the current fiscal disadvantage of equity financing compared with debt financing. In any event, **at the federal level the Federal Council does not foresee the introduction of a deduction for interest on equity**. This is because of the negative reactions to the instrument in advance of the CTR-III Bill.

Although not formally part of the Tax Package 17, as already announced in the context of CTR III, most cantons are planning a more or less significant reduction of the cantonal corporate income tax rate. In order to compensate the resulting lower revenues and to avoid individuals having to fund the cost of the reform, the Federal Council proposes the following measures to compensate the expected loss of revenues:

- **Increase in the cantonal share of the revenues from Direct Federal Tax** from the current share of 17% to 20.5% (this is different from the recommendation of the Steering Committee, which had proposed an increase to 21.2%), including a clause for the participation of the communes in this increase;

- **Increase of partial taxation of private dividends** to a standard 70% both for Direct Federal Tax and for cantonal and communal taxes;
- **Limitation of the maximum relief** from all the planned measures to 70%;
- **Increase in the minimum children's and training allowances** by CHF 30.

Next steps:

The Federal Council has requested that the consultative draft should be prepared by September. The consultation shall then be held until December 2017. Based on the results, the bill for parliament will be drafted, which should reach Parliament for debate in spring 2018. After completion of the parliamentary discussions and expiry of the 100 day referendum period, the Federal Council must set the date of enactment of the changes to the law resolved by Parliament. As of today the aim is that the Federal Council could do this with effect from 1 January 2019 (or a year later).

At the level of the cantons it is expected that they will drive forward their cantonal implementation projects rapidly in parallel with the federal reform and, wherever possible, shorten their cantonal legislative process. SV 17 should therefore also enter into effect at the cantonal level quickly. As of today it is to be expected that this will not be before 1 January 2020.

EU-Blacklisting

On 10 December 2016 the EU Council approved criteria and a process concerning the blacklisting of non-cooperative countries in tax matters. In the context of a screening process the EU determines to what extent individual countries satisfy the following three criteria:

- a) Application of the international rules on tax transparency,
- b) Fair design of national tax rules and
- c) Adoption of the minimum standards pursuant to the provisions of the OECD BEPS Project.

92 states, including Switzerland, were informed on 2 February 2017 that they are being examined by the EU in accordance with the three criteria mentioned. This examination process is to be concluded in 2017. Already at the end of 2017 the EU Council will approve a black list of those states, which do not successfully pass the examination process. Currently it is unclear how the EU will assess Switzerland. It is clear that Switzerland fulfils the first and third criterion. It is equally clear that the second criterion is at present not fulfilled. This is the case as long as the tax regimes to be abolished in the context of SV 17, which are classified by the EU (and also by the OECD) as harmful, still apply. It is hoped that following a rapid realisation of SV 17 the EU will continue to respect the agreement of 14 October 2014 made with Switzerland and will not proceed hastily to a blacklisting with counter-measures, because the Swiss people rejected CTR III. In the agreement of October 2014 Switzerland had undertaken to abolish the regimes considered harmful by the EU. In return the EU undertook at the same time to revoke existing measures of individual EU states against Switzerland. An explicit deadline for this was not agreed. However abolition of the present tax regime had been expected by the beginning of 2019.

In order to avoid disadvantageous consequences in connection with an EU blacklisting that at present cannot be excluded, it may be desirable to give up present special regimes and to change to ordinary taxation. In this case, even under prevailing law, a number of cantons, allow a tax-free step-up of the

hidden reserves created under the special regime («Step-up practice»). A current overview can be found below.

In order to determine the possible advantage of using these Step-up transition rules, PwC is developing an App, with which the „Step-up Potential“ and the approximate amount of the possible tax saving can be determined free of charge. For straightforward situations there is also the possibility to order a PwC valuation report (not free of charge) via the App. It is anticipated that the PwC Step-up App will be available from early September.

We in PwC will actively follow the further developments in SV 17 and the implementation work in the cantons, as well as the international developments affecting Switzerland, such as EU blacklisting. We will also continue to advocate for the appropriate introduction of the surplus capital deduction at cantonal level and a fair transition rule for Federal Tax.

We recommend that you consider the changing tax environment at an early stage and review the impacts on your company promptly and analyse alternative strategies. For example, the impact on the valuation of deferred taxes in the consolidated accounts, the possible advantages of the choice of transition rules or the Step-up, the benefit of the other relief measures (research and development deduction, patent box, etc.) and the different possibilities in different cantons should be reviewed.

In connection with the EU blacklisting, in particular the potential option of an early transition to ordinary taxation in connection with the cantonal Step-up practice should be analysed. This would create information about the strategic alternatives with the associated advantages and disadvantages on a timely basis for the attention of the management or the board of directors.

Canton	Step-up	Type of provision	Notes	Special rate *)	Write-off
AG	YES	“Merkblatt Holding- und Verwaltungsgesellschaften” (information sheet on holding and auxiliary companies) of 1 January 2015, section 3	Following change in status losses may only be offset to the extent of the taxable portion		FTA guidelines; goodwill 10 yrs
AI	?	According to CTR III steering body report YES, but no published regulation			
AR	YES	Directive of 26 August 2004 issued by the Tax Appeals Commission, sections II.8; III.A.7; III.B.5	Following change in status losses may only be offset to the extent of the taxable portion		
BE	YES	Specialist information on Art. 98 BE tax law, section 6.3	Relates to holding companies		
BL	YES	“Baselbieter Steuerbuch” (Basel region tax book), volume 2 “Unternehmenssteuerrecht” (corporate tax law), 63 no. 1, section 6.2	Relates to holding companies; step-up only in final year before change of status		
BS	YES	“Merkblatt Holdinggesellschaften” (information sheet on holding companies) of 3 January 2011, section 2.22; “Merkblatt Domizilgesellschaften” (information sheet on domiciliary companies) of 1 September 2013, section 2.6		2.91%/ 3.47 %, until the end of 2023	
FR	?	According to CTR III steering body report YES, but no published regulation		7.12 %	
GE	?	According to CTR III steering body report YES, but no published regulation		2.76 %	
GL	?	According to CTR III steering body report YES, but “Merkblatt Besteuerung der Holding und Verwaltungsgesellschaften” (information sheet on taxation of holding and auxiliary companies), p. 2 f. unclear (“without any immediate tax impacts”)			
GR	YES	“Praxisfestlegung Steuerverwaltung Graubünden (practice rules of Graubünden tax administration), section 7			
JU	YES	legal provision (Art. 84b para. 2 JU tax law)			
LU	YES	Directive on §86/94 no. 1, section 8	Relates to auxiliary companies only		
NE	?	No published regulation			
NW	YES	Provisions relating to individual cases, in accordance with “Richtlinien des kantonalen Steueramtes Besteuerung von Holdinggesellschaften (Ziffer 4) / Verwaltungsgesellschaften (Ziffer 5)” (cantonal tax office guidelines on taxation of holding companies [section 4] / auxiliary companies [section 5])			

Canton	Step-up	Type of provision	Notes	Special rate *)	Write-off
OW	YES	“Dienstanleitung zum Steuergesetz” (tax law instructions) 08/2011 of 1 January 2011, section 3.3.4			
SG	YES	“Steuerbuch St. Gallen” (St. Gallen tax book), StB 92 no. 1 holding companies, section. 5.2; StB 93 no. 1 domiciliary companies, section. 5.2	Relates to holding and domiciliary companies respectively		
SH	?	No published regulation		2.08 %	
SO	YES	“Steuerpraxis 2016” (tax practice 2016) no. 3 of 23 December 2016, transition from taxation as a holding, domiciliary or mixed company to ordinary taxation (change in status): impacts on hidden reserves and losses from previous years		3.08–3.32 %	10 yrs
SZ	YES	“Weisung zur Besteuerung von Beteiligungs-, Holding-, Domizil- und gemischten Gesellschaften (HDW)” (directive on taxation of investment, holding, domiciliary and mixed companies) of 25 February 2011, sections 37, 64 and 86			
TG	YES	StP 87 no. 1, section 8 (holding companies); StP 88 no. 1 section 8 (auxiliary companies); StP 88 no. 2 section 7 (mixed companies)	Losses following change in status can only be offset to the extent of the taxable portion		
TI	YES	Circular no. 29/2017	Step-up only in final year prior to change in status; optional taxation of Swiss portion on step-up		10 yrs
UR	YES	“Merkblatt zur Besteuerung von Beteiligungs-, Holding-, Domizil- und gemischten Gesellschaften” (information sheet on taxation of investment, holding, domiciliary and mixed companies), section 2.2.3			
VD	?	No published regulation			
VS	?	No published regulation			
ZG	YES	“Merkblatt Steuerliche Aspekte eines Statuswechsels” (information sheet on fiscal aspects of a change in status) of 22 September 2016	Following change in status losses may only be offset to the extent of the taxable portion		Up to 5 yrs after CTR
ZH	YES	Directive of 19 July 2012 and announcement of 22 September 2016: transition from taxation as a holding company to ordinary taxation (change in status), impacts on hidden reserves and losses from previous years		1.13 %	10 yrs

*) Special rates according to announcements by cantons prior to CTR III vote; percentages may be subject to change during SV 17 process.