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Switzerland Tax Alert

How the Swiss Corporate Tax Reform III interacts with BEPS

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Don’t forget BEPS when you consider Swiss Corporate Tax Reform III

With the so-called Corporate Tax Reform III (CTR III) Switzerland intends to remain a very competitive business location for multinationals and to be aligned with the upcoming international standards as part of the Base Erosion and Profit Shifting (BEPS) initiative of the OECD.

Under of the proposed reform, likely by 2019 or 2020, all Swiss special corporate tax regimes will be replaced by other similarly attractive tax measures. In addition, it is expected that most cantons will reduce their headline tax rates significantly. All these measures combined should provide companies with low tax rates and planning security in Switzerland until years 2029 or 2030, i.e., for up to 15 years from now.

What companies **currently** need to consider are potential implications of BEPS in relation to CTR III. For example, multinationals operating under a principal model may be affected by OECD efforts to attribute a higher share of profit to group entities with limited functions and risk profiles (e.g. toll manufacturing / commissionaire structures). In particular, the recently published discussion draft on Permanent Establishment (PE) avoidance may require changes to the business model. Otherwise a principal company is likely to confront challenges in having PEs in a number of countries.

Accordingly, companies need to bear in mind the **upcoming changes** both under CTR III and BEPS. The most significant changes are in the following areas:

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- **Transparency:** As part of the Country-by-Country Reporting as well as the planned simplified exchange of information between foreign tax administrations, multinationals need to ensure that their business model is consistent and that any questionable results from the Country-by-Country Reporting are properly explained and documented.
- **Substance:** Under BEPS it is crucial that companies (particularly principal companies and/or IP companies) have the necessary management substance (own qualified staff) in place in order to justify the residual profit in the future.
- **Taxable presence:** With the planned change of the PE definition in Article 5 of the OECD Model Tax Convention certain activities may create a taxable presence in the future (e.g. commissionaire structures / warehouses if considered more than mere auxiliary function). Structuring options to mitigate the tax impact of potential new PEs may adversely affect the tax benefits of Swiss companies with a principal company tax status, which phases out in 2019 or 2020. Companies affected should begin already now to consider how to best mitigate the gap in timing between BEPS and CTR III in order not lose any tax advantages. Read the full discussion paper by the OECD **here**.

While certain changes under the BEPS initiative will require a change of the law, changes which are merely a new interpretation of existing rules come into force with **immediate effect**. Companies will have to address now how they may be affected and how they may best adapt to the new rules.

If you have any questions, please do not hesitate to contact us.

Best regards,

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