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ICEbreakers: Unlocking Switzerland

Hot topics

BEPS developments:

- **Improving transparency**: A law requiring the automatic exchange of information on tax rulings became effective on January 1, 2017, with the first exchanges expected to take place as from January 1, 2018 (relating to the 2017 tax period, but covering tax rulings obtained in 2010 or thereafter that are valid and in effect in 2018). Some Swiss cantons require taxpayers to notify the tax authorities whether they wish to maintain their rulings or to withdraw them before December 2017; the exact deadlines vary by canton, so potentially affected taxpayers should follow up as soon as possible and take action, as needed.
- **Country-by-country (CbC) reporting**: To fully implement CbC reporting in Switzerland, the parliament still must approve a new Swiss law and the acceptance of the OECD Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports. If the parliament agrees and no referendum is held, the new law and the multilateral agreement could enter into force at the end of 2017. In that case, multinationals in Switzerland would be required to prepare reports for the 2018 tax year, and these reports would be exchanged in 2020, although groups would be able to voluntarily submit CbC reports for tax periods before 2018.
- **Transfer pricing guidelines**: In the absence of specific domestic transfer pricing legislation, the Swiss tax authorities will follow the revised version of the OECD transfer pricing guidelines included in BEPS action items 8-10.
- **Multinational treaty**: Switzerland signed the multilateral instrument (MLI) on June 7, 2017, and has decided to apply the principal purpose test and to adopt the provisions on arbitration. The MLI now will go through Switzerland's legislative process and is expected to enter into force in Switzerland in 2019.

Tax Reform Proposal 2017: The Federal Council released a revised tax reform proposal (called the "Tax Reform Proposal 2017" or TRP 2017) on September 6, 2017, in the wake of the rejection by the electorate of the Corporate Tax Reform III (CTR III) in February 2017. The TRP 2017 is broadly similar to the CTR III, but the notional interest deduction has been eliminated and changes have been made to the proposal relating to the partial taxation of dividends for individuals. The revised proposal contains measures to compensate for the abolition of special corporate tax regimes, such as the mixed, domiciliary, holding and principal company regimes, and the Swiss finance branch regime, including the following:

- Reduction of the general cantonal/communal corporate income tax rates at the discretion of the individual cantons (some cantons have announced rate reductions to as low as 12%-13% (including the direct federal and cantonal/communal income tax));
- Introduction of a mandatory patent box regime at the cantonal level that would follow the OECD modified nexus approach and would be applicable to all patented intellectual property for which the R&D spend qualifies, resulting in an effective tax rate of about 8.7%-10% (including the direct federal and cantonal/communal income tax);
- Introduction of R&D incentives at the cantonal/communal level in the form of excess R&D deductions of up to 150% of qualifying Swiss expenditure, at the discretion of the individual cantons;
- Allowance of a step-up (including for self-created goodwill) for direct federal and cantonal/communal tax purposes upon the migration of a company or of additional activities and functions to Switzerland;
- Allowance of the tax-privileged release of hidden reserves for cantonal/communal tax purposes for companies transitioning out of tax-privileged cantonal tax regimes (e.g. mixed or holding companies) into ordinary taxation, resulting in a tax rate similar to that under the former tax-privileged regime, for up to another five years;
- Limitation of the combined tax relief resulting from the patent box, the R&D super deductions and the amortization of hidden reserves to 70% at the cantonal/communal levels; and
- Reduction of the cantonal/communal annual net wealth tax with respect to the holding of participations, patented IP and intercompany loans at the discretion of the individual cantons.

A consultation on the proposed legislation will last until December 6, 2017, during which various stakeholders can comment on the measures, so that a final version can be introduced into, and voted on, by parliament during the spring 2018 session. If a referendum is not held, the new law could become effective by January 1, 2020, but no later than January 1, 2021 (after implementation by all cantons). In the meantime, the existing tax-privileged regimes should remain in place, at least until January 1, 2019, and potentially until January 1, 2020 or 2021.

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