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Switzerland

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Overview of corporate tax work over last year

Types of corporate tax work

M&A

Swiss corporate tax work in 2016 focused primarily on M&A transactions, both in the private and public sector, as well as on reorganisations. The last few weeks of the year 2016 and the early beginning of the year 2017 especially demonstrated the importance of the area, with key transactions such as Lonza's acquisition of Capsugel or Johnson & Johnson's acquisition of the Swiss biopharmaceutical company Actelion.

Tax litigation

During the past year, another major part of tax work related to litigation concerned the refund of Swiss Withholding Tax (dividend-stripping cases).

IPOs

In the period under review, three companies (Investis Holding SA, KTM Industries AG and Varia US Properties AG) were listed on the Swiss stock exchange. With a placement volume of CHF 163m and an implied total market capitalisation of CHF 734m, Investis Holding SA, a leading residential property company in the Lake Geneva region and a national real estate service provider, was the largest among the three. Further, the pharmaceutical company Galenica (future name Vifor Pharma) announced the IPO of a part of its business (Galenica Sante) in March 2017.

Significant deals and themes

M&A

The following deals stood out in 2016/17, all requiring tailored corporate tax advice for the transaction itself, the integration or the debt financing:

- **Galenica's $1.5bn acquisition of Relypsa Inc.**: Galenica, one of the Switzerland's biggest pharmacy network, bought Relypsa Inc. to gain a new medicine and commercial network in U.S.
- **Lonza Group Ltd's $5.5bn acquisition of Capsugel S. A.**: On 15 December 2016, Lonza announced its acquisition of Capsugel S.A. With this acquisition**,** Lonza becomes a leading integrated solutions provider to the global pharma and consumer healthcare industries. The transaction includes the refinancing of existing Capsugel indebtedness of $2bn.
- **Johnson & Johnson's $30bn acquisition of Actelion**: On 25 January 2017, Johnson & Johnson launched an all-cash tender offer in Switzerland to acquire all of the outstanding

shares of Actelion. As part of the transaction, immediately prior to completion of the acquisition, Actelion will spin out its drug discovery operations and early-stage clinical development assets into a newly created Swiss biopharmical company ("R&D NewCo"). The shares will be listed on the SIX Swiss Exchange (SIX), and will be distributed to Actelion's shareholders as a stock dividend upon closing of the tender. Johnson & Johnson will initially hold 16% of the shares of R&D NewCo.

Reorganisations

- **Regus's Introduction of New Holding**: Regus proposed a scheme of arrangement to introduce a new holding company, incorporated in Jersey and with its head office in Switzerland. The new holding company is called IWG Plc and is primarily listed on the main market of the London Stock Exchange. On 19 December 2016, 923.4m Regus shares were delisted and the same amount of IWG shares were admitted to trading, so each Regus shareholder received shares in IWG on a one-for-one basis.

Financing

- On 22 September 2016, Novartis Finance S.A. completed the placement of two Notes of EUR 1,250,000,000 due 2023 and EUR 500,000,000 due 2028. The 2023 Notes were issued at 99.127% of their principal amount with an interest of 0.125% and will mature on 20 September 2023 at their nominal value. The 2028 Notes were issued at 98.480% with an interest of 0.625% and will mature on 20 September 2028 at their nominal value. Both Notes are guaranteed by Novartis AG. They are provisionally admitted to trading and expected to be listed on SIX Swiss Exchange Ltd.
- Lonza Group AG successfully placed 5 million shares by way of an accelerated bookbuilding and completed a capital increase of approximately CHF 865 million to partially finance the acquisition of Capsugel S.A (see above).
- On 20 December 2016, Meyer Burger Technology AG completed a rights offering as part of a recapitalisation programme. The recapitalisation programme consisted of three pillars: the amendments of the terms and conditions of the outstanding convertible bonds approved in a bondholder meeting; a capital increase by way of a rights offering in the amount of approximately CHF 164 million; and the extension and amendments of existing bank credit facilities. With the completion of the rights offering, the recapitalisation programme was successfully implemented.

Key developments affecting corporate tax law and practice

Domestic legislation

Corporate Tax Reform III (CTR III)

Mainly upon pressure from the EU, Switzerland committed in July 2014 to abolish its cantonal (holding, domicile and mixed companies) as well as federal tax regimes (finance branch and principal companies). Consequently, approximately 24,000 companies currently benefiting from a privileged taxation status will lose their tax privilege and instead be subject to ordinary taxation. On 5 June 2015, the Federal Council published its draft legislative proposal for the CTR III.

On 12 February 2017, the CTR III was submitted to a referendum and rejected by a 59.1% vote. Opponents of the rejected reform proposal were primarily concerned with the potential losses in cantonal tax revenues. Even so, the need to abolish the cantonal tax privileges remains uncontentious as requested by the OECD and EU, but the opponents of the CTR III strive for a more balanced bill. Thus, a new proposal is likely to be less far-reaching. In particular, the provided measures such as the super-deduction for R&D

expenses as well as the Notional Interest Deduction might not be part of a new proposal. Further, potential countermeasures like increasing the partial taxation quota for dividends at the level of individuals will require further discussions. Nevertheless, and similar to the rejected reform proposal, the new bill will have to introduce some measures designed to maintain and reinforce the fiscal attractiveness of Switzerland.[1]

To avoid unilateral tax repercussions from the EU, the OECD or any other individual countries, Switzerland will be inclined to implement a new corporate tax reform as soon as possible. As a consequence of the rejection, the current corporate tax laws remain in force and the current tax regimes should generally remain available until a revised tax reform is passed and effectively enacted. On 22 February 2017, the Federal Council published a press release outlining that the objective of the new draft legislation remains the strengthening of Switzerland's competitiveness and safeguarding the tax revenues of the Confederation, cantons and communes. The Federal Council has instructed the Federal Department of Finance to submit substantive parameters during the second quarter of 2017 for a new proposal and suggestions on how to proceed.[2] Further, on 2 March 2017, the Federal Department of Finance stated that it is forging ahead with work on a new corporate taxation proposal entitled tax proposal 17 ("TP 17"). The swift implementation and abolishment of the special tax regimes is desired by all sides. According to the TP 17's timetable, the first important milestone will be the hearings with political parties, cities and communes in March 2017. The cornerstones of the new proposal should then be submitted to the Federal Council in June 2017 for decision-making.[3]

Dividend Withholding Tax – changes to the notification procedure

For Swiss intra-group dividends, the dividend notification procedure instead of paying and reclaiming withholding tax may be applied if the corporate recipient of the dividend holds at least 20% in the Swiss corporation paying the dividends and the recipient is entitled to reimbursement of the withholding tax.[4] Similar rules apply under various double tax treaties and the EU-Swiss Interest Savings Agreement. In 2011, the Swiss Federal Supreme Court held that the 30-day filing deadline for the notification is a forfeiture and not a pure administrative deadline. Consequently, missing the deadline resulted in withholding tax payments of 35% (temporary cash out due to the refund possibility) and 5% p.a. late payment interest. This decision led to a significant increase on untreated withholding tax cases and to significant claims regarding interest on late payments by the Swiss Federal Tax Administration (SFTA).

In the 2016 fall session of the Swiss Parliament, the Council of States and the National Council reconciled their differences and agreed on an amendment to the Swiss Withholding Tax Ordinance in connection with the application of the dividend notification procedure. Under the revised Swiss Withholding Tax Ordinance, which came into force on 15 February 2017, the 30-day filing period constitutes a mere administrative deadline and, thus, the application of the dividend notification procedure is applicable even if the 30-day filing period has not been complied with as long as the substantive requirements for the notification procedure are met. Late filing of forms does not have default interest consequences any more. However, late filing of the declaration and notification forms can be sanctioned by means of an administrative fine of up to CHF 5,000. As the rules will apply retroactively, interest payments made since 2011 can generally be claimed back via applications to the SFTA during a one-year period, thus starting with the coming into force of the revised law by 14 February 2018.[5]

Automatic Exchange of Information (AEOI)

On 1 January 2017, Swiss AEOI implementation legislation (the Administrative Assistance Convention, the Multilateral Competent Authority Agreement, the Federal Act on the AEOI, the Ordinance on the International Automatic Exchange of Information in Tax Matters as well as the final version of the AEOI Guideline) entered into force. With the new global standard, the EU-Swiss Interest Savings Agreement will be replaced from 2017/18 (except for the withholding tax exemption for dividends, interest and royalties between certain group companies, which remains in force). In the draft Ordinance, the US was treated as a participating state. This qualification was heavily criticised in the consultation period, where various participants proposed that Switzerland's treatment of the US should be in line with the other financial centres, having in the meantime taken the US from their list of participating states. Accordingly, the qualification of the US has been changed in the final version of the Ordinance to a non-participating state.[6]

As part of "Wave 2", Switzerland's first exchange of information will take place in autumn 2018. As of 17 March 2017, Switzerland counts 78 partner states including the agreement with the EU which applies for all 28 EU Member States. The agreement with the EU and with nine other states (Australia, Canada, Guernsey, Isle of Man, Iceland, Japan, Jersey, Norway, South Korea) came into force on 1 January 2017 and the first data-exchange between Switzerland and these countries will take place in autumn 2018 with regard to data from 2017. The agreements with the other mentioned states are scheduled to come into effect as of 1 January 2018, with the first data transmission in autumn 2019. Among these countries is the Principality of Liechtenstein with whom Switzerland had to negotiate an AEOI agreement for quite a long time.[7] As more than 100 states have already committed to implement AEOI, it is expected that Switzerland's list of partner states will further increase during the coming months.

Spontaneous Exchange of Tax Ruling: see below under the heading BEPS

International double tax treaties

Switzerland remains active in negotiating new or revising existing double tax treaties. Among the most important ones is the new double tax treaty with Liechtenstein, which entered into force on 22 December 2016 and will facilitate access by Swiss-based companies to the EU market as Liechtenstein is part of the European Economic Area. The new treaty provides for a full withholding tax exemption on dividends with a minimum of 10% shareholdings after a one-year holding period.

Revised double tax treaties, which entered into force during June 2016 until February 2017 include treaties with Norway, Latvia, Albania and Italy. As of 22 December 2016, Switzerland has signed 54 double tax treaties in line with international OECD standards on exchange of information, whereof 50 are in force, and 10 tax information exchange agreements, whereof nine are in force.

Change in practice regarding the taxation of start-up companies in the Canton of Zurich

On 1 November 2016, the Finance Department of the Canton of Zurich issued a directive stating that for the purpose of wealth tax, the value of shares in start-up companies with no market value shall correspond to the net asset value. This principle shall be dropped when a start-up company first achieves representative business results. Further, the directive explicitly states that the prices paid in financing rounds or capital increases are not used to calculate values for the purpose of wealth tax until the company's start phase is over.[8] This is an important clarification to avoid a significant wealth tax burden for the individual Swiss resident shareholders during the start-up phase. A number of other cantons apply similar rules.

Partial revision of Swiss VAT Act

The most important VAT change for companies relates to the mandatory tax liability. Currently, a Swiss domestic company is not subject to VAT if it generates a turnover from taxable supplies of less than CHF 100,000 within one year. Thus, foreign-based companies are currently not subject to Swiss VAT as long as their turnover in Switzerland is below CHF 100,000, irrespective of the worldwide turnover. The partial revision aims at removing this discrimination between domestic and foreign-based companies. According to the new law, which will take force as of January 2018, not only domestic turnover, but also worldwide turnover will be taken into account in order to determine whether a company is liable for Swiss VAT purposes. This partial revision is not only important for foreign companies, but also for Swiss-based companies, which are currently, due to VATable turnover below CHF 100,000, not subject to Swiss VAT.

<u>Domestic case law</u>

BGer 2C_276/2016: Dutch group request concerning UBS clients

On 23 July 2015, the Netherlands submitted a group request for administrative assistance to the SFTA concerning a special group of UBS clients. The SFTA found the Dutch group request to be permissible in fall 2015. However, the Swiss Federal Administrative Court approved the appeal filed by an affected Dutch taxpayer. Last but not least, on 12 September 2016, the Swiss Federal Supreme Court overturned the Swiss Federal Administrative Court's decision. The highest court concluded that, according to the double tax treaty between Switzerland and the Netherlands, it is sufficient if the group request contains enough information that will allow an identification of the person in question. Further, it also judged that the case at hand was not an inadmissible fishing expedition.

BGer 2C_916/2014 and 2C_917/2014: Tax deductibility of financial sanctions

In its decision dated 26 September 2016, the Swiss Federal Supreme Court was required to determine whether and to what extent financial sanctions pertaining to a legal entity constitute business-related expenses and are, thus, deductible for tax purposes. In the case at hand, a legal entity was sentenced by the European Commission to a fine in the amount of EUR 348,000 for breaking competition rules. The court concluded that financial sanctions of a criminal nature are non-deductible, while sanctions aimed at profit forfeiture are tax-deductible. The question whether sanctions of a criminal nature shall be tax-deductible was a question of interpretation of the law. The Supreme Court's main arguments concerned the equal treatment of individuals who are not allowed to deduct personal fines and also that the community shall not have to bear a part of such a fine, which would be the case if it were tax-deductible. However, the court referred the crucial question as to what extent the imposed fine was of criminal nature or aims at profit forfeiture back to the lower court. Therefore, the authority which imposes the fine (e.g. FINMA, WEKO, etc.) has to decide on the nature of the sanction or the affected taxpayer must provide evidence that the fine contains forfeiting elements. It is a question of time as to when the Swiss Federal Court needs to decide whether or to what extent fines of the Department of Justice ("**DoJ**") under the US tax programme are tax-deductible. The SFTA already outlined its view on the fiscal treatment of financial sanctions against Swiss banks within the DoJ programme in a letter to the cantonal tax authorities. According to the SFTA, such a fine consists of a criminal, a forfeiture and a restitution element, the criminal and restitution element being non-deductible. As the Swiss Federal Supreme Court has not yet commented on the deductibility of the restitution element, it will be the crucial question for all concerned banks as to whether the SFTA's guideline on this point will be confirmed by the court.

BVGer-A-4974/2016: UBS granted party status in administrative assistance procedure initiated by French tax authorities

On 11 May 2016, the French tax authorities submitted a request for administrative assistance to the SFTA requiring the transmission of data in relation to a five-digit quantity of client numbers including the domicile code for France. The French authorities had received the list of client numbers from German investigating authorities. Information holders such as banks or fiduciaries have to provide the SFTA with the requested client information, but they are generally not granted party status. In the case at hand, the Swiss Federal Administrative Court decided that UBS as information holder is – because of three reasons – directly affected and therefore has its own interest in having the SFTA's decision cancelled. First and foremost, the compilation of the requested five-digit number of data sets leads to a huge workload for UBS. Second, the unusual high number of clients concerned by the request could leave the impression that UBS might have systematically helped clients to evade taxes. Lastly, the most important argument was that there is the possibility that this data might be used in criminal proceedings already launched against UBS in France. The consequence of this decision is that the SFTA had to allow UBS to inspect all files and will have to serve it with all final decisions. Furthermore, UBS will be in the position to challenge all final decisions rendered by the SFTA.

BGer 2C_404/2015: Swiss Pension Fund entitled to reclaim Swiss Withholding Tax on dividends received indirectly via Irish investment fund

In a recent decision, the Swiss Federal Supreme Court ruled that a Swiss regulated and tax-exempt pension fund is entitled to reclaim Swiss federal withholding tax deducted from dividends of publicly traded shares of Swiss companies. The pension fund had invested in these shares only indirectly, via an Irish contractual fund acting as an investment vehicle for several local pension funds of a multinational enterprise. The Supreme Court reasoned that the Irish investment fund was comparable to a Swiss contractual fund, treated as a fiscally transparent entity for Irish tax purposes and thus had to be treated as fiscally transparent for purposes of the Swiss double taxation treaty with Ireland and of the Federal Withholding Tax Act as well. Accordingly, the Court concluded that the Swiss pension fund had to be recognised as the ultimate beneficial owner of the dividends derived through the transparent Irish fund. Furthermore, the Swiss Federal Supreme Court held that in the case at hand, the Swiss pension fund had sufficiently accounted for the income and, thus, met all conditions for reclaiming the Swiss withholding tax. The decision is to be welcomed, as it clarifies the Supreme Court's position with regard to Swiss withholding tax reclaims on investments held via a fiscally transparent investment vehicle.[9]

BVGer A-1426/2011 (not final): Swiss Court denies tax treaty benefit to long borrower of Swiss shares

On 20 December 2016, the Federal Administrative Court upheld a decision by the SFTA to reject the tax treaty-based partial refund claims of a Luxembourg resident financial institution (hereafter called "LuxBank") for Swiss withholding taxes withheld from dividends paid on stock exchange-listed Swiss shares, which LuxBank had borrowed from an affiliated financial institution resident in the UK under standardised securities lending and borrowing contracts. The Federal Administrative Court essentially found that the Swiss tax treaty with Luxembourg could not be applied, based on its conclusion that LuxBank was not the beneficial owner of the dividends, as LuxBank was contractually required under the securities lending arrangements to make "manufactured payments" to the UK Bank. In the Federal Administrative Court's opinion, this resulted in a passing-on of the dividend benefits to persons that are not entitled to any benefits from the tax treaty between Luxembourg and Switzerland.[10] This case is currently pending at the Swiss Federal Supreme Court.

International developments

BEPS

Switzerland has actively participated in the OECD's BEPS initiative and will implement the BEPS minimum standards as follows:

Action	Topic	Way of Implementation in Switzerland
5	Abolition of harmful tax regimes.	The new bill of the CTR III/TP 17 will implement appropriate measures to replace favourable cantonal and federal tax regimes.
5	Requiring substantial activity for preferential regimes.	A patent box, if implemented in the CTR III/TP 17, will follow the OECD standard.
5	Improving transparency, including the compulsory spontaneous exchange of information on certain rulings.	Agreement on OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters and revision of Swiss Federal Act on International Administrative Assistance in Tax Matters (see below).
6	Prevention of treaty abuse.	Inclusion of new abuse clauses in double tax treaties regarding treaty shopping.
13	Automatic exchange of country by country reports (CbCR; without master and local file).	Agreement on the multilateral CbCR convention and enactment of law regarding CbCR (see below).
14	Making the dispute resolution mechanism more effective.	Switzerland already offers access to the required dispute resolution mechanism; all new double tax treaties are in line with the OECD minimum standard.

BEPS Action 5: Implementation of the spontaneous exchange of information on tax rulings

With regard to BEPS Action 5, Switzerland has implemented the spontaneous exchange of information in tax matters in its domestic legislation with effect from 1 January 2017. The regulations on the spontaneous exchange of tax rulings are included in the Tax Administrative Assistance Ordinance, which was revised due to this purpose. The Ordinance provisions are closely based on the guidelines in the BEPS Action 5 report. The exchange covers Swiss tax rulings, which have been granted after 1 January 2010 and are still in force at 1 January 2018, i.e. the time when the actual exchange of tax rulings will start in Switzerland. In line with BEPS Action 5, only a summary, but not the whole ruling will be spontaneously exchanged. The spontaneous exchange is *per se* not restricted to rulings; any information which might be of importance for the other state can be subject to a spontaneous exchange of information. However, for the latter the Ordinance does not yet contain specific cases as the practice still needs to be developed in congruence with international standards and practice applied by other countries. As regards the procedural rights, the person concerned by the spontaneous exchange of information will be informed about the intended exchange in advance except in cases where the purposes of the administrative assistance would be defeated and the success of the investigation would be endangered by a prior notification. The persons concerned have participations rights and rights to appeal, similar to other cases of exchange of information. The new transparency should not change the Swiss ruling practice *per se* – with a full disclosure of the relevant underlying facts and a solid tax analysis on the basis of applicable law. As regards rulings which may not uphold these standards, there is the possibility to amend or terminate them by the end of 2017. The exact implementation (e.g. electronic submission of summary template) is currently developed and shall be communicated in April 2017.[11]

BEPS Action No. 13: Country-by-Country Reporting

On 23 November 2016, the Swiss Federal Council adopted the dispatch on the Multilateral Agreement on the exchange of Country-by-Country Reports (MCAA-CbCR) of multinational enterprises (MNEs) and draft federal implementing legislation (Federal Act on the International Automatic Exchange of CbCRs of MNEs (ALBA Act)). The proposal is aimed at implementing the BEPS minimum standard. If the dispatch will be approved by the Parliament and provided that no referendum will be requested, the MCAA-CbCR and the ALBA Act might enter into force at the end of 2017, implying that qualifying MNEs operating in Switzerland would start having to prepare such reports from the fiscal year 2018 onwards. Switzerland would implement the automatic exchange of such CbCR with its partner jurisdictions on an annual basis as from 2020. Once the ALBA Act enters into force, the Federal Council will determine the list of jurisdictions with which to automatically exchange such reports. MNEs may, however, voluntarily choose to submit CbCRs even for tax years earlier than 2018, which would be exchanged by the SFTA already as from 2018. Given the minimum consolidated turnover threshold of the equivalent of EUR 750 million, an estimated 200 Swiss MNE will be affected. Non-compliance with the country-by-country reporting obligation may be subject to a penalty of up to CHF 250,000.[12]

BEPS Action No. 15: Developing a multilateral instrument (MLI) to modify bilateral tax treaties

Switzerland has played an active role in the elaboration of the MLI. It called for the MLI to incorporate the reservations and options necessary for Switzerland. The MLI has been ready for signing since the end of December 2016. In Switzerland, the following next steps are planned:[13]

1. The Federal Council will decide whether Switzerland will sign the MLI. If Switzerland is to sign the MLI, the Federal Council will submit a provisional list setting out the countries and territories in respect of which the MLI should apply for Switzerland. It will also set out the double tax agreements (DTA) adjustments that Switzerland is considering.
2. Once the MLI has been signed, the Federal Council will hold a consultation process. As part of this process, the Federal Council will propose the states and territories with which the MLI is to apply and the provisions of Switzerland's DTAs that are to be amended.
3. On the basis of the subsequent responses received, the Federal Council will then submit its dispatch to Parliament.

Concerning the recommendations that are not in the form of minimum standards, the Federal Council has instructed the Federal Department of Finance, in collaboration with the cantons and business circles, to analyse the amendment of Swiss corporate tax law in the light of international developments.

Tax climate in Switzerland

Due to the upcoming spontaneous exchange of rulings with foreign tax authorities as of 2018, it is expected that current tax rulings may be terminated by the taxpayers at the latest before the end of 2017 to avoid an exchange or to amend existing tax rulings in view of the future exchange. The tax authorities will need additional resources for the collection and analysis of the rulings and may require additional information for future rulings in order to complete the template (with the summary of the ruling, group companies, etc.) for the exchange. In view of the general tax transparency discussion and information on aggressive tax structures with offshore companies, Swiss tax authorities are focusing more on such structures, scrutinising business substance in offshore (non-double tax treaty) countries and the profit allocation to such locations. More court cases covering partnerships, permanent establishments or companies, e.g. in Guernsey, Jersey and the Cayman Islands, have been decided in the recent past, mainly to the benefit of the Swiss tax administration, confirming no (sufficient) activity abroad or no place of effective management in Switzerland.

As a general tendency, the current international tax environment and certain BEPS initiatives may actually result in more tax disputes, advance pricing agreements and mutual agreement procedures. Although many of Switzerland's double tax treaties already provide for an arbitration clause, they have been of little practical importance so far. However, we do expect that arbitration in international tax matters will increase in the years to come. With regard to the arbitration clause in the double tax treaty between Switzerland and Germany, a consultation agreement to ensure uniform application and interpretation of art. 26 para. 5–7 DTA was signed between the authorities on 21 December 2016.[14]

Further, the Swiss Corporate Tax Reform III/TP 17 may increase competition between the cantons: whereas the tax rate differences for privileged taxed companies were not significant between the cantons, the ordinary tax rates are and the movement of mobile functions within Switzerland may be a consequence. Thus, more disputes under the intercantonal prohibition of double taxation may also arise.

Developments affecting attractiveness of Switzerland for holding companies

Currently, holding companies are exempt from cantonal and communal profit tax and pay only a reduced capital tax at the cantonal/communal level as well as a 7.8% profit tax (effective tax rate) at federal level. However, as outlined above, the privileged cantonal holding status will be abolished in the context of the Swiss Corporate Tax Reform III and respectively the TP 17.

Thus, holding companies will be subject to ordinary taxation: they will continue to benefit from the participation relief on qualifying dividend income and capital gains, but other income (interest, royalties, management fees) will generally be fully taxable. In view of international tax developments with a focus on substance, functions and key employees, Swiss groups may increase their business activities in holding companies since the requirements (no business activity in Switzerland) for privileged taxation will be abolished.

Industry sector focus

Banking

From a taxation point of view, a particular challenge for the Swiss banking industry was the 'US tax programme'. Based on the joint statement signed on 29 August 2013 and the unilateral US tax programme of the US Department of Justice, Swiss banks that had reason to believe they may have violated US law (category 2) had to register with the Department of Justice by 31 December 2013 and fulfil the requirements of the US tax programme by 30 June 2014. Many Swiss banks sought this opportunity to resolve the tax dispute. By 27 January 2016, all Swiss banks in category 2 of the US tax programme had concluded a Non-Prosecution Agreement (NPA) with the DoJ in order to resolve the tax dispute with the United States.[15] In a press release dated 29 December 2016, the DoJ stated that all applications from category 3 banks which believe they have not violated US tax law have been examined and five Non-Target Letters (confirmation that the bank is not under investigation and that there will be no prosecution) have been issued. Moreover, the DoJ also stated that none of the banks that operate exclusively on a local basis – assigned to category 4 – have received a Non-Target Letter. With regard to category 1 banks, against which criminal investigations are already being carried out by the DoJ, the Swiss-US tax dispute is still ongoing and will keep Swiss tax and litigation lawyers busy in the near future.[16]

Pharmaceutical industry

M&A activity in the pharmaceutical industry continues (see above with regard to the deals during the period under review). For pharmaceutical companies it will be important if or to what extent the patent box and the R&D super-deduction will be included in the TP 17.

Fintech industry

In November 2016, the Federal Council published a press release stating that there are plans to reduce barriers to market entry for fintech firms as a dynamic fintech system can contribute significantly to the quality of Switzerland's financial centre and boost its competitiveness. The Federal Council has instructed the Federal Department of Finance to draw up a consultation draft with the required legislative amendments by the start of 2017.[17] As regards the taxation of Fintech companies, there are currently no specific tax benefits planned.

The year ahead

During the year ahead, the Corporate Tax Reform III and the content of the TP 17 will continue to be at the centre of attention. It is the aim that the Parliament will succeed in finding a robust solution or compromise within a reasonable timeline.

Swiss privileged taxed companies need to decide whether they want to change their privileged tax status once the reform comes into effect or even before; most cantons provide for a step up for cantonal tax purposes if a company ceases to benefit from a tax privilege. Such step up to fair market values (plus own created goodwill) may be later depreciated over a limited timeframe, resulting in a reduced tax burden at the cantonal level.

For Swiss financial institutions as well as asset managers and trust companies, 2017 will be an important year as the Swiss AEOI implementation legislation came into force on 1 January 2017. Swiss-based financial institutions have to assess whether they qualify as Financial Institution for AEOI purposes, and if so, have to register with the SFTA by 31 December 2017. During 2017, Swiss-based financial institutions are required to perform due diligence on all accounts and need to collect the relevant data, which will then be exchanged in autumn 2018 with foreign tax authorities.

Since international work on the BEPS actions as well as the EU anti-tax avoidance package (ATAD II: covering third countries) will continue, Swiss companies need to follow these developments and may need to adjust their set-up. In particular, more stringent CFC rules by foreign jurisdictions may have a negative impact on Swiss companies in view of further tax rate reductions, which are discussed in the course of the Corporate Tax Reform III/TP 2017, and may put more emphasis on business substance and activities.

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Endnotes

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Susanne Schreiber is a frequent speaker at national and international tax seminars. She regularly publishes on tax topics, mainly in the area of international corporate tax, mergers & acquisitions and restructurings.
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