

Update

Newsflash May 2019

Swiss holding, domiciliary and mixed company tax treatments abolished by the end of 2019

In a popular vote of May 19, 2019, the Swiss electorate approved an important tax reform. The revised corporate income tax law abolishes the special cantonal tax treatment for holding, domiciliary and mixed companies by the end of 2019.

Furthermore, the law includes transition and replacement measures including the introduction of a patent box regime, an R&D super deduction and a notional interest deduction on excess equity. Moreover, most cantons plan to significantly reduce their ordinary corporate income tax rates. In addition, the reform includes new rules on the immigration to and the exit from Switzerland, privileged taxation of dividend income and the capital contribution principle.

Termination of the special tax regimes – What's next?

The special tax regimes for holding, domiciliary and mixed companies will be abolished by the end of 2019. The same holds true for the special tax rules applicable to principal companies and Swiss finance branches at the federal level (since February 2019, no new principal companies are allowed anymore). Simultaneously, most cantons, including in particular the French speaking cantons, have already or should significantly reduce their ordinary corporate income tax rates.

Companies taxed under a special tax regime so far, must now decide to either voluntarily terminate its existing special tax treatment or to wait for the abolition of these rules by law. In both cases,

most German speaking cantons in particular, provide for the following transitional measures.

- › Upon a voluntary termination of its special tax regime, a company may tax neutrally step-up its hidden reserves (including self-created goodwill), to the extent they would have been tax exempt under the special tax regime, and thereafter depreciate against taxable income.
- › Upon termination of the special tax regimes by law, the so far tax exempt hidden reserves (including self-created goodwill) are formally assessed by the tax administration (with no immediate tax impact). The realization of these hidden reserves is subsequently taxed at a lower corporate income tax rate during a five-year period.

Proposed replacement measures

Corporations may also choose to apply the patent box regime or, if provided in a particular canton, the R&D super deduction on personnel expenses. In addition, the canton of Zurich intends to introduce a notional interest deduction (NID) relating to excess equity financing. Many cantons also intend to reduce their annual capital tax rates, sometimes limited to participations, group-loans and patents.

The cantons will now have to amend the cantonal tax codes accordingly. The so far published legislative proposals (and few already adopted laws in the Cantons of Basle-City, Geneva and St.Gall) suggest that the tax reform will be implemented quite differently in each of the 26 cantons.

Changes for shareholders

Finally, the new law provides for a few changes, relevant primarily for shareholders. These changes include (i) a limitation of tax-free distributions out of capital contribution reserves of Swiss stock exchange listed corporations, (ii) an increase of the tax base for distributions received by Swiss resident individuals holding qualifying participations and (iii) an extension of the rules applicable to the transfer of shares in an own holding company ("Transponierung").

Next steps

Our advisory experience in this area so far has shown that the tax consequences of the various options now available may differ significantly for each company concerned.

Businesses should analyze the impact of the different transition and replacement measures, including a full or partial relocation of its business to another canton.

In this context, companies so far benefitting from mixed and domiciliary companies, and to a lesser extent also holding companies, will have the option to provide the tax administrations with sound and sustainable valuation reports regarding the amount of its hidden / untaxed reserves; in particular relating to its IP.

The conclusions from such analysis may then have to be pre-discussed with the competent tax authorities before initiating any implementation. Such discussion may result in an advance tax ruling formally confirming such future tax treatment.

Please do not hesitate to contact us in case of any questions.

Legal Note: The information contained in this UPDATE Newsflash is of general nature and does not constitute legal advice. In case of particular queries, please contact us for specific advice.

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