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Tax, Legal and Corporate Consultancy

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Innovation, flexibility and expertise

SWITZERLAND: TAX CHANGES DUE TO TAX REFORM WITH INTERNATIONAL RELEVANCE

Introduction

The Corporate tax reform (TRAF) came into force on 1 January 2020 and is of particular importance at international level. In particular, the aim was to eliminate the disparity in treatment of companies' immigration to Switzerland, since before the entry into force of the TRAF, a company under foreign law could be taxed with an exit tax by the transferring country and could be denied the possibility by Switzerland to adjust the tax-determining values during immigration, thus facing possible double taxation (taxa-

tion from the outgoing country as an exit tax and in Switzerland at the time of the implementation of the hidden reserves). In addition to the above, with the TRAF, the possibility for a Swiss company establishment of a foreign company to claim a global tax statement comes into force.

Declaration of hidden reserves at the beginning and end of the subjection

If at the beginning of the subordination the taxpayer declares hidden reserves, including the added value generated internally, they are not subject to profit tax¹.

The transfer of assets, businesses, branches of business or abroad activities to a compa-

ny or business establishment located in Switzerland shall be deemed to be the commencement of subordination². Hidden reserves declared in the tax basis balance sheet can be amortized annually by the tax rate applied under the SFTA memorandum. The value added internally (goodwill) and declared must be amortized within 10 years³.

On the other hand, the declaration of hidden reserves at the end of the subjugation was possible even before the TRAF came into force⁴. For simplicity, the legislature wanted to group this case in the category of restructuring.

² Art. 61a, para. 2 DBG

³ Art. 61a, para. 4 DBG

⁴ Pursuant to Art. 58 para. 1 lett. C DBG

¹ Art. 61a para.1 DBG

In the event of an end to subordination, the hidden untaxed reserves which existed at that time, including the added value created internally, are taxable⁵.

The transfer of goods, businesses, branches of activity or functions from Switzerland to an enterprise or business establishment abroad and the transfer abroad of the effective head office or administration shall be deemed to be an end of the subordination⁶.

Global foreign withholding tax calculation

Under current law, business establishments of foreign companies in Switzerland cannot claim residual tax relief on interest, dividends and licensing rights from third countries. This is because business establishments are not considered to be permanent residents of Switzerland. With the TRAF, the legal basis has been created which makes it possible to calculate tax for business establishments in Switzerland.

Conclusion

These new tax rules, which entered into force on 1 January 2020, allow foreign companies wishing to transfer the company or any part of it to disclose their hidden reserves and benefit from higher tax-determining values. This will create a reduction in the tax base and therefore tax savings at direct federal, cantonal and municipal tax levels.

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SWITZERLAND: ENTRY INTO FORCE OF THE CANTONAL TAX REFORM

On 19 May 2019, the Swiss went to the polls to vote on the Federal Act on Tax Reform and Financing of the AHV (TRAF).

The vote was welcomed by more than 66% of the voters.

On 4 November 2019, the amendment to the tax law was approved by the Grand Council but a “Red and Green” front promoted the referendum with a deadline for the collection for signatures at the beginning of January.

With the failure of the referendum, the Cantonal measures of implementation of the

TRAF took effect and came into force from 1 January 2020.

The following are the real changes that are taking place.

Entry into force 01.01.2020

- Abolition of special cantonal tax statutes and the introduction of the transitional rule for the treatment of hidden reserves until 31.12.2024, in favour of those companies that benefited from subsidized taxation. This measure is undertaken to reduce the risk of relocation of the companies involved, which contribute significantly.
- Reduction of the cantonal rate on corporation and cooperative profits from the current 9% to 8% until 31.12.2024.
- Reduction of the cantonal tax coefficient from 100% to 97%.
- Introduction of a new cantonal contribution of up to CHF 13.5 million for the benefit of municipalities.
- Introducing new tax instruments to strengthen the cantonal innovation development strategy by using the maximum leeway allowed by the new federal rules, Patent box, 50% increased deduction for research and development activities and related reliefs for capital and substance tax. Alignment of taxation of liquidation profits to DBG (Federal Act on Direct Federal Tax).
- Cantonal stamp duty exemption for companies that carry out business mainly

abroad and only marginally in Switzerland and for companies whose statutory purpose is essentially the long-term management of holdings (holding companies).

Entry into force 01.01.2024

- Reduction of the cantonal tax rate from 97% to 96%, however, subject to the decision of the Grand Council.

Entry into force 01.01.2025

- Reduction of the cantonal rate on profits of corporations and cooperatives from the current 8% to 5.5%.
- Increase in the percentage of profit tax in the corporate capital tax of legal entities from the current 10% to 16%.
- Introducing the possibility for municipalities to differentiate, within certain parameters, the tax levy between individuals and legal entities, differentiated municipal multiplier.

The reforms described above will make it possible to:

- Ensure equal tax treatment for businesses by setting an equal tax rate for all.
- Reduce the risk of relocation of companies, including small and medium-sized enterprises (SMEs), which may find more favourable conditions in other cantons.
- Ensure Ticino is attractive and competitive in a context of increased tax competition, keeping the tax burden in line with the inter-cantonal average.
- Reducing the tax burden for citizens, all categories of individuals will benefit from

Summary of LAID adjustments and requirements for the cantons

Measure	Cantonal requirements	TI implementation
Repeal of special cantonal statutes	Mandatory repeal	✓
Patent box	Mandatory introduction Maximum relief rate: 90%	✓ (90%)
Increased deduction for research and development expenses	Optional introduction Maximum surcharge percentage: 50%	✓ (50%)
Limitation of tax relief	Mandatory introduction Maximum relief rate: 70%	✓ (70%)
Declaration of hidden reserves to regime change	Mandatory introduction	✓
Declaration of hidden reserves at the beginning/end of subjugation	Mandatory introduction	✓
Increase in partial taxation of dividends	Mandatory increase Tax rate: 70%	Already implemented
Correction of the capital injection principle	Compulsory adjustment	✓
Adjustments relating to transposition	Compulsory adjustments	✓

⁵ Art. 61b para. 1 DBG

⁶ Art. 61b para. 2 DBG

a reduction in the tax on income and wealth.

- Safeguard the fiscal substrate in the medium to long term.
- Make the financial impact for both canton and municipalities sustainable.
- Municipalities will benefit from greater freedom of choice in implementing their tax policy.

Our team is available for any and every in-depth analysis.

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UNITED ARAB EMIRATES: INTRODUCTION OF LEGISLATION ON ECONOMIC SUBSTANCE AND EXIT FROM THE EUROPEAN UNION'S BLACK LIST

On 30 April 2019 the United Arab Emirates (UAE) approved Resolution No. 31 introducing into the tax legislation the provisions on economic substance (*Economic Substance Regulations*) of activities based in the UAE. This legislation applies to all individuals and legal entities, holders of a licence issued by one of the relevant UAE authorities, who obtain their income from carrying out one or more relevant activities in one or more of the following areas: banking, insurance, fund management, shipping, lease-finance, distribution and service centres, headquarters and/or investment holding companies, exploitation of intellectual property. The term licence includes a business licence, a certificate of incorporation and any type of permit required to start a business activity in the UAE.

The Minister of Finance subsequently published the Guidelines with Ministerial Decree No. 215 of 11.09.2019, containing several clarifications concerning the legislation on economic substance requirements.

Entities directly or indirectly controlled (at least 51% of the share capital) by the government and activities subject to government authority are expressly excluded from the scope of this law. In order to comply with ESR legislation, companies will have to meet three types of requirements:

- (i) to have the direction and management of the company in the UAE: this re-

quirement is considered satisfied when at least one Board of Directors is held in the UAE during the financial year, drawing up written minutes, signed by every director present and keeping them in the UAE. If the company is represented by an individual, the same requirements will apply;

- (ii) to carry out its main economic activity in the UAE;
- (iii) have an adequate and appropriate operating structure (qualified personnel, offices, operating expenses): the Guidelines did not want to impose numerical parameters in terms of employees and structure operating costs, specifying that the terms "adequate" and "appropriate" depend on the nature and level of the activity carried out. However, the company will have to retain (for a period of six years) appropriate accounting instruments to demonstrate the adequacy of the resources used and the expenses incurred.

The Guidelines confirmed that any expenses charged by an external provider, located in the UAE, for activities carried out in favour of the company can also be considered in determining the concept of "adequacy" of corporate resources and have also introduced specific clarifications for the following types:

- (i) companies whose activities are limited to holding shares in other companies, receiving only capital income from them (dividends or capital gains), must meet reduced economic substance requirements;
- (ii) companies receiving income from intellectual property exploitation are considered to be at high risk and are therefore subject to additional reporting obligations;
- (iii) a company may be considered the parent company based on its activities and the services provided and not by its position within the Group organization chart.

Interested parties should notify the relevant authority if they are performing a relevant activity for the purposes of the Economic Substance Regulations, specifying whether the profit of that activity is subject to taxes in other foreign jurisdictions and the company's financial year end. They shall submit annually, within 12 months from the last day of the tax period following 1 January 2019, a report to the competent authority indi-

cating the type of activity carried out, the amount and type of income, operating expenses and information on personnel.

Failure to comply with the requirements of economic substance and/or the submission of reports provided by a company may result in increasing administrative fines over time (up to a maximum of AED 300'000) and the potential cancellation from the Commercial Register.

The introduction by the UAE of the regulation of 30 April 2019 on economic substance, which originates from the decision of the UAE of 16 May 2018 to join the *Inclusive Framework on Beps* promoted by the OECD, allowed the United Arab Emirates to be deleted from the EU List on non-cooperative jurisdictions (*black list*) on 10 October 2019,

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ARGENTINA: NEW EMERGENCY AND SOCIAL SOLIDARITY LAW APPROVED

Law 27.541 "*Ley de Solidaridad Social y Reactivación Productiva en el marco de la Emergencia Pública*" has been in force since 23 December 2019, introducing a package of emergency fiscal measures to help the country recover from the current economic crisis.

The law includes changes in relation to income tax rates and withholding tax on dividends; adjusting inflation for tax purposes; regularisation of tax liabilities for the property tax of micro and small businesses; export duties; and a new tax applicable to foreign currency acquisition and purchases made by Argentine residents using foreign currency

Below are some of the most relevant tax measures:

Corporate income tax rate and withholding tax on dividends

The previously approved reduction in the corporate income tax rate from 30% to 25%, which was scheduled for 1 January 2020, is suspended for one year until 01 January 2021. Therefore, the corporate tax rate remains at 30% for the 2020 calendar year. The planned increase in withholding tax on

dividends from 7% to 13% is also suspended until 01 January 2021.

Personal property tax

The rate of property tax on the value of shares and holdings in Argentine companies increased from 0,25% to 0,5%, this tax applies to residents and non-residents as well as to companies. A new progressive rate provides for personal property tax rates of between 0,5% and 1,25%, depending on the value of the taxpayer's taxable assets.

The law also authorizes the executive power to increase the applicable rate on assets held outside Argentina by Argentine residents up to a maximum of 2,5% and to reduce that rate if those entities repatriate assets held abroad.

New tax applicable to foreign currency purchase

A new tax will apply for the next five years to individuals and entities residing in Argentina on the purchase of certain foreign currencies and the purchase of foreign currency via credit cards.

These transactions are subject to a 30% rate and are not subject to tax credit.

Argentine financial institutions, credit card issuers, travel agencies and transport companies will act as tax collection agents, which will be withheld at the time of payment.

Inflation adjustment

The law establishes a new method for adjustments to the calculation of inflation, which corresponds to the first and second fiscal year after 1 January 2019. A sixth (1/6) of the inflation adjustment will be calculated in the fiscal year of the adjustment calculation and the remaining five-sixths (5/6), calculated in equal parts, will apply in the five years immediately following the financial years.

Taxes on credits and debits in Argentine bank accounts

The rate of credit and debt tax in bank accounts increased to 1,2% for cash withdrawals, with the exception of accounts held by individuals and legal entities qualified as micro and small businesses.

Regularization of tax, social security and customs obligations for micro and small businesses

The law establishes a new plan for the settlement of outstanding tax debts as of November 30 2019 for micro and small businesses, including federal taxes, social security taxes (some exceptions apply) and import and export duties. The deadline to apply for the regularisation plan is 30 April 2020. This scheme provides for the "financing" of tax liabilities in up to 120 instalments and includes the forfeiture of penalties and interest.

Export duties

The law allows the executive power to increase export duties up to 33% for soybean exports, 15% for exports of other products that were not subject to export duties on 2 September 2018 and 5% for industrial products and services.

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