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## Tax Connect Flash

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### Switzerland : Corporate Tax Reform III passed by Swiss Parliament

On 17 June 2016, the Corporate Tax Reform III (“Bill”) was passed by both chambers of the Swiss parliament. Certain elements of the extensive reform were subject to considerable dispute and resulted in a political compromise between the two chambers. Still, the Swiss Social Democratic Party has already announced to gather votes for a referendum in order to keep the Bill from entering into force.

#### Key Features of the Corporate Tax Reform III

The core of the Bill consists in the abolishment of the Swiss preferential tax regimes, including the Domiciliary Company Privilege, the Mixed Company Privilege and the Holding Company Privilege on cantonal/municipal level as well as the Swiss Finance Branch and the Principal Company Status on federal level. Some of the preferential tax regimes have been the object of an ongoing dispute with the EU dating back to 2005, allegedly being in violation of the EC Switzerland Free Trade Agreement due to the “ring-fencing” of foreign sourced profits. Moreover, the abolishment of the preferential tax regimes also brings the Swiss corporate tax regulations in line with the standards set by BEPS Action 5 (*Countering Harmful Tax Practices More Effectively*).

In order to remain fiscally attractive and prevent the migration of the approx. 24'000 companies currently in benefit of a privileged tax regime, the Bill provides for the following compensatory measures:

- Voluntary tax systematic goodwill realization for companies undergoing a status change from privileged taxation to ordinary taxation on cantonal/municipal level, where the realized amount of goodwill on the privileged portion of the business will be taxed at a reduced rate over a transitional period of five years after the status change in order to ease the financial impact of the Bill for formerly privileged companies (“Separate Rate Model”);
- New patent box regime (“Modified Nexus Approach”) at cantonal/municipal level;
- Optional implementation of super R&D deduction of up to 150% at cantonal/municipal level;
- Notional Interest Deduction (“NID”) on above-average equity at cantonal/municipal and federal level (implementation optional at cantonal/municipal level).

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In order to maintain the fiscal competitiveness of Switzerland on an international level, it is envisaged that the new measures shall be accompanied by a general reduction of cantonal/municipal corporate income tax rates at the discretion of each canton, to be compensated by an increased cantonal share in direct federal tax. Certain cantons such as Geneva and Vaud have already communicated a target effective corporate income tax rate of around 13%-14%, while the tax reductions in other cantons such as Zurich will be much less dramatic (all three cantons currently have effective corporate income tax rates above 20%; the Swiss average is currently around 18%).

**It is currently expected that the Bill will come into force as per 1 January 2019.**

The tax reform might be subject to a public referendum (if 50'000 signatures are collected within 100 days or 8 Cantons are demand it). Depending on the timing of the referendum, the entry into force of the new legal provisions may be pushed further back.

**Further points of interest in a corporate tax and BEPS related context include:**

- On 20 April 2016, the Federal Council initiated the consultation process on the total revision of the Federal Ordinance on Administrative Assistance in Tax Matters, which will define the framework and the procedures required for the spontaneous exchange of information, including the exchange of tax rulings covering certain topics which are relevant under BEPS on the basis of the OECD Convention on Mutual Administrative Assistance in Tax Matters. The consultation process will last until 10 August 2016, after which the Federal Council will publish the final version of the ordinance, currently expected to enter into force as per 1 January 2017. As per the draft provisions, it is envisaged that relevant tax information will be exchanged with partner states spontaneously for tax periods commencing on 1 January 2018, including tax rulings remaining in effect as per 1 January 2018, but excluding any tax rulings which have been granted before 1 January 2010.
- On 13 April 2016, the Federal Council initiated the consultation process on the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports and the corresponding federal act required for its implementation. The objective of the proposal is to improve transparency with regard to the taxation of multinational companies among partner states and to establish a uniform framework for the exchange of the reports. Country-by-country reports will have to be prepared by multinational companies headquartered in Switzerland with an annual consolidated turnover of more than EUR 750 million (CHF 900 million). Based on an initial estimate approximately 200 groups resident in Switzerland are potentially affected. It is currently expected that the first reports will have to be prepared for the period 2018 and that exchanges will begin in 2020.
- The planned abolition of the Issuance Stamp Duty (1% on contributed capital) has (yet again) been postponed and separated from the Bill.
- The introduction of a Tonnage Tax for shipping companies which had been suggested during the parliamentary process did not make it into the final Bill.

Companies which are currently benefitting from a preferential tax regime may wish to analyse the effect of the forthcoming tax status change, the respective opportunities as well as the potential impact of an exchange of existing tax rulings respectively the possibility of their prior cancellation.

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