GHR Factsheet

Swiss Fiscal reform and AHV*-financing 2019 (STAF) *Old Age and Survivors' Insurance

Introduction

After the corporate tax reform III (USTR III) failed at the polls on 12 February 2017, on 19 May 2019 a new tax submission with the inclusion of AHV additional funding was adopted by Swiss voters. This Factsheet explains the most important changes and points out the resulting new options for action.

Abolition of tax privileges

Prior to the poll, the Federal Tax Administration (ESTV) had announced that, by the end of 2019, it would terminate its practice regarding principal companies and Swiss Finance Branches. Following the vote of 19 May 2019, the previous Cantonal tax privileges of holding-, domicile- and mixed enterprises will be abolished as from 1 January 2020. Thus, the total or partial tax-free earnings and the significantly lower taxes on the capital of the companies concerned are a thing of the past.

Step-up

Hidden reserves existing at a change of status including self-generated added value (goodwill) which under the present regime would not have been taxable will be bindingly fixed by the Cantonal tax authorities upon application once the bill comes into force. On realization (e.g. sale) within five years, these hidden reserves will be taxed at a special lower rate (special rate solution). Cantonal special rates vary considerably and fall between 1% and 13%. Therefore, the tax-neutral disclosure of relevant hidden reserves in the tax balance sheet with subsequent tax-effective depreciation (so-called former-law step-up) as still practiced in most Cantons today will no longer be possible in the future. In return, however, deferred tax assets need no longer be reported.

When a company moves into Switzerland from abroad, the hidden reserves incl. goodwill can be disclosed neutral to tax and subsequently written off against the income statement.

Patent box

On the cantonal level, a patent box is being introduced. The net profit accruing to patents and comparable intellectual property, corrected by the ratio between own R & D costs (plus commissioned research) in Switzerland and the total R & D costs, will benefit from a rebate (the so-called OECD's nexus concept). Cantons may exempt up to 90% of the relevant profit from income tax. Patents and comparable rights which are open to being patented qualify for the patent box. However, software can only profit from a patent box insofar as it is part of a (possibly in a foreign country) patentable invention.

Reduction of Cantonal tax rates

In order to maintain attractive tax conditions, Cantons can reduce the tax rate on earnings as well as marking selected assets as tax privileged. Many Cantons have reduced or will reduce the tax rate on earnings to a very varied degree.

Higher taxation on dividends

For natural persons, dividends from shareholdings of at least 10% are taxed at a privileged rate. What is new now is that the privilege will be standardized in both procedure and its scope of application. On the federal level, dividends will be included uniformly in the assessment basis at 70% (to date: 50% in case of business assets and 60% in case of personal assets). A lower limit of 50% now applies to Cantons. Here too, there are considerable differences (50%: NW, OW, SZ, ZG and ZH; 80%: BS).

New provisions for transposition

If shares are sold from personal assets to companies in which the seller is at least a 50% shareholder (so-called transposition), in future it will have to be clarified in every case (to date only in case of a sale of a shareholding of at least 5%) whether the tax exemption of a resulting capital gain still applies.

Deduction of interest on equity capital

Cantons with high tax rates can, in exceptional circumstances, permit the deduction of fictional interest on excess equity. Reference is made to this in literature as the so-called "interest adjusted profits tax". Currently, only companies registered in the Canton of Zurich will be able to benefit from this provision.

Cap on tax relief

Despite the Cantons' great freedoms, limits will be set with respect to maximum tax relief. Thus, the total of all deduction measures (patent box. research deductions, interest deduction on equity, former-law step up) may amount to no more than a maximum of 70% on the level of net profit. By implication, this means that at least 30% of the net profit must be subject to ordinary taxation.

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Innovations in capital contribution principle

The Corporate tax reform II of 2011 created the option of distributing capital contribution reserves (KER) tax-free to shareholders. The largest corporations availed themselves of this extensively. Excessive handling of this right has now (again) brought about a legislative correction.

Now companies listed in Switzerland may only distribute tax-free KER if they pay out taxable dividends from profit reserves (i.e. free reserves / retained earnings) in at least the same amount. If a company distributes KER without simultaneously distributing the required dividends from profit reserves, the tax exemption of KER falls away, namely to the extent to which distributable other reserves in terms of commercial law would have been available. If a company has no other distributable reserves, KER can be distributed without limitation.

Blanket tax credit for operational facilities

The STAF brings relief to operational facilities of foreign companies in Switzerland. These will now also benefit from blanket tax credit. Up to now this option was only available to subsidiary companies.

Compensation for Cantons

In order to limit the consequences of the reduced tax income for the Cantons, they will now receive a 4.2% higher rate of compensation. From 1 January 2020, the Federal Government will transfer 21.2% of the direct federal tax to the Cantons.

And what happens in the AHV?

Since the tax package will cost an estimated CHF 2 billion per year, in political negotiations a CHF 2 billion packet in favour of AHV (the Old Age and Survivors Insurance) has also been approved. This amount will essentially benefit the following three measures:

1. The AHV contribution will be increased by 0.3% of pay;
2. The demographic contribution of 1% which currently is collected via VAT is to be transferred to the AHV;
3. The Federal contribution to the AHV will now be increased from 19.55% to 20.2%.

Financing these decisions varies: Measure 1. is paid by employees and employers, measure 2. represents a redistribution, and measure 3. is at the expense of the (federal) taxpayer.

Summary

The electorate has decided. And it was important that this decision was made. The economy will be able to live with it. Especially small and medium sized companies will, however, find it hard to apply the bill optimally to their circumstances. Analyzing this will take time and know-how.

Nevertheless, in our opinion the effort is worth it. Depending on the type of enterprise and its business case, substantial sustainable tax savings can be attained. In this, we side with Helmut Schmidt, the former chancellor of the Federal Republic of Germany: ***"Everyone has the duty to pay taxes and the right to save on taxes."***

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