



SUMMARY

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NEXT SEMINAR

On November 17, 2016, Nelly Iglesias will be giving a conference at the Hôtel Beau-Rivage in Neuchâtel on the topic: **Latest developments in the field of International Administrative Assistance in Tax Matters and Double Tax Treaties**. The presentation will focus on the Automatic Exchange of Information regarding bank data, the Spontaneous Exchange of Information regarding tax rulings and latest insights regarding double tax issues between Switzerland and France. Organiser: *EXPERTsuisse, Ordre neuchâtelois et jurassien*.

1. Corporate Tax Reform III in Geneva

After a legislative process going on for many years, the Swiss Parliament finally adopted on June 17, 2016 the current version of the Corporate Tax Reform III consisting in a series of corporate tax reform which should **deeply modify the Swiss panorama in the field of corporate taxation**. The main purpose of the corporate tax reform is: (i) to enhance the attractiveness of Switzerland as a business location, (ii) to contribute to the international acceptance of its tax system, (iii) to provide legal certainty for taxpayers, and (iv) to be in line with internationally accepted tax standards.

The Swiss cantons are now in the process of amending their cantonal tax laws so as to be in line with the new draft federal legislation. Some cantons have already communicated their plans with respect to the implementation of the Corporate Tax Reform III. The canton of Geneva has released its **new guidelines on August 30, 2016** and simultaneously opened a consultation procedure aimed at gathering the opinion of various economic and political players.

The consultation procedure has come to an end on October 14, 2016. The next step is now the drafting of the new Geneva provisions and the deliberations before the Geneva parliament.

Today's situation

Under the ordinary corporate tax regime, corporations resident in the canton of Geneva are subject to federal, cantonal and communal taxes on their worldwide income at an effective rate of approx. 24,2% (Basis: City of Geneva, year 2015. The tax rate may vary each year and depends on each commune). In addition, special tax regimes are available for corporations mainly active at the international level or holding participations: holding status, auxiliary company tax status, principal company and Geneva finance branch.

Outlines of the proposed guidelines

In the frame of the Corporate Tax Reform III, the **special tax regimes are expected to be replaced**

by new tax incentives. The broad lines of the tax reform are currently the following in the canton of Geneva:

- **Reduction of the effective corporate income tax rate from 24.2% to 13.49%** (federal, cantonal and communal taxes included).

An additional 0.3% cantonal tax should be levied during a five-year transitional period starting from the entry into force of the new provisions. Furthermore, a new contribution of 0.22% on the wage bill due by employers could be introduced.

The new tax rates should apply to all companies resident in Geneva, notwithstanding their type of activity.

- **Patent box and increased deductions of expenses related to Research & Development (R&D)**, in order to foster innovation and progress. Tax reliefs on qualifying patent income should reach 10% and qualifying R&D expenses benefit from a cantonal tax deduction of up to 150%.
- **Step-up in two cases:** (i) full tax relief of hidden reserves* in case of relocation of an enterprise, assets or functions in Geneva, and (ii) income derived from the realization of hidden reserves for companies that benefitted from prior special tax regimes will be taxed at a reduced rate during a five-year transitional period (topic covered in our December 2015 Newsletter). In Geneva, the minimum overall tax rate shall be of 13%. It means that a portion of the yearly profits will be taxed separately at a lower tax rate during a five-year period.

**Hidden reserves correspond to the difference between the market value of the assets and their book value.*

- No introduction in Geneva of an additional tax deduction consisting in a notional interest deduction (NID) for cantonal and communal tax purposes. However, this special deduction will be

available at the federal level.

- Threshold of **13%** as minimum overall effective tax rate in Geneva (federal, cantonal and communal taxes included), after taking into consideration the new tax incentives (patent box and R&D super deduction). But thanks to a possible NID at the federal level, the effective tax rate may still be reduced to even **6%**.
- **Full credit of the cantonal income tax on the capital tax** (as opposed to today), meaning *in concreto* that no capital tax would be levied if the amount of capital tax is lower than the cantonal income tax.
- **Additional capital tax reductions** on the portion of equity related to participations, patents and similar intellectual property rights as well as intragroup loans. The tax rate on such assets should be of only 0.001%.

At this stage, the Corporate Tax Reform III has not yet binding effect. A referendum shall take place at the federal level on February 12, 2017. If the tax reform is accepted by the Swiss people, the new laws should come into effect on January 1, 2019 both at the federal and cantonal levels, depending on the outcome of the legislative process in Geneva.

2. Amendments to the declaration procedure regarding dividend distributions

The present chapter focuses on the current positive outcome of the legislative process regarding the **deadline for the declaration procedure** applicable on dividend paid out by Swiss companies. It represents an update of our December 2015 Newsletter on the same topic.

The Swiss parliament has approved the amendments on September 30, 2016. The new provisions should come into effect in February 2017 at the soonest, provided no referendum takes place (referendum deadline expires on January 19, 2017).

Description of the declaration procedure

In principle, a Swiss company must withhold a 35% tax on dividend payments. The beneficiary of the dividend is however able to request a partial or full tax refund provided specific requirements are met. If the beneficiary is a corporation which holds a qualifying participation in the Swiss debtor company, the Swiss company may fulfill its obligation by declaring the dividend distribution to the Swiss Federal Tax Administration (**SFTA**) instead of paying the full withholding tax and asking afterwards for a refund. This is what we call the “**declaration procedure**”.

In order to benefit from the declaration procedure, the Swiss company must first request an authorization to apply it by filing official forms with the SFTA (823, 823B or 823C). These forms must be filed **before the due date of the dividend**, provided the conditions of the declaration procedure are fulfilled.

The declaration of the dividend distribution must further be made by means of other official forms (106 or 108 together with 102, 103 or 110, depending on the type of dividend and the place of residence of the beneficiary). The deadline for filing these forms expires **30 days after the dividend payment is due**. If no due date has been set, it is assumed that the dividend is due immediately and the date of the Shareholders’ General Assembly serves as basis for computing the 30-day deadline.

Following a court decision of the Swiss Federal Supreme Court issued on January 19, 2011, the SFTA adopted a very restrictive practice in cases where the 30-day deadline was not met: taxpayers had to pay

the full 35% withholding tax plus interest for late payment. The withholding tax could then be partially or fully refunded whereas the interest for late payment represented a non-recoverable final burden for the taxpayer.

New provisions

According to the draft new provisions, **if the conditions for the declaration procedure are fulfilled but the 30-day deadline is not met, it would still be possible to benefit from the declaration procedure**. As opposed to the Federal Council’s initial proposal in the frame of the legislative process, no deadline extension has been agreed.

Furthermore, **no interest for late payment shall be levied** even if the 30-day deadline is not met. An administrative fine for a maximum amount of CHF 5’000.- could however be due.

Interest for late payment that has been paid to the SFTA because of non-compliance of the 30-day deadline under the former rules could be refunded upon request. **A refund of the interest for late payment already paid is limited to cases starting from January 1, 2011**. The refund request must be filed within one year after entry into force of the new provisions.

Under such circumstances, companies that may benefit from the new favourable provisions should take quickly action. Please contact us for additional information and/or an individual assessment of your case.



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