Swiss Taxation - Update 2012

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1. Introduction

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The partner

- Daniel Spitz – Swiss certified tax expert, Specialist in Individual and Corporate tax advice

Background

- Ex-Big4
- Focus on taxes only (no « fiduciaire »). www.dsconsulting.ch
- Able to deal with international issues/constraints
- **Expertise**
- **Quality**
- **Tailor made solutions**
- **Added value**
- **Fair prices**

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2. Exchange of information

Background

- Pressure from the OCDE and EU for the automatic exchange of information
    - Switzerland forced to negotiate
    - RUBIK agreements with Germany, the United Kingdom and Austria
- Introduction of a “tax at source discharge” for any income (capital gains, interest, dividend) generated on assets belonging to a tax payer of the other country
- Introduction of a one-time lump-sum payment to solve the past
- In exchange: the tax payer and information related to his assets remain anonymous
- Self-denunciation instead of tax at source discharge always possible
- Introduction of fishing expedition up to 500 requests per year
- Swiss banks will pre-pay CHF 500 million! (2 billion with Germany)

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2. Exchange of information

Current situation

- The European Commission has given its approval on April 17, 2012, concerning the tax agreements with Germany, Austria and the United Kingdom.
- The RUBIK agreements with the UK and Austria entered into force on the January 1st, 2013.
- German Parliament denied the treaty. To date, likely that no treaty will be concluded.
- In Switzerland, the referendum against the RUBIK agreements has failed on October 3, 2012. It all has been approved by Swiss Parliament.
- Italy and Greece are interested by the RUBIK agreements.
- France expressed high critics against this type of agreement.
- Future of such agreements is very unstable.
- Could create an important distortion in view of the global and automatic exchange of information.

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2. Exchange of information

OECD and EU position on Switzerland

- Bilateral and case by case negotiation has come to an end
- EU wants Switzerland to follow automatically the evolution of EU legislation and practice
- Insufficient number of double tax treaties with the exchange of information clause (art. 26 OECDM)
- Automatic exchange of information
- Amendment/extension of the savings agreement

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3. Special tax status

➢ What is it ?

- The special tax status is a particular status granted by the tax authorities which offers tax savings to companies which meet some specific conditions.
- There are 2 kinds of special tax status
  - the holding status
  - the based or mixed company status.
- In order to obtain the holding status a company should respect the following conditions :
  - to be a company which holds and manages investments
  - to have no **commercial** activities **in Switzerland**
  - 2/3 assets/income from investments

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3. Special tax status

➢ **What is it ?**

➢ In order to obtain the based or mixed company status a company should respect the following conditions :

- mainly foreign – foreign activity (70-80%).
- no goods imported on Swiss territory

➢ The effective income tax rates

- 7.8 % maximum for holding company until 0 % for pure holding company
- between 9 and 13 % for based or mixed company, depending on the canton
- average 19 % for an ordinary taxed company

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3. Special tax status

➢ The issue

- The European Union presses Switzerland to abolish the special tax status because the status violates the Free Trade Agreement (FTA) between the European Community and Switzerland.
- During the year 2012, Switzerland and the European Union officially enter into formal dialogue regarding the special tax status.
- If the special tax status are abolished, the companies which would lose their status would certainly leave Switzerland for another country.
- The impacts for Switzerland would be very important.
  - ➡ 20'000 companies take advantage of the special tax status
  - ➡ 200'000 jobs were created by these companies
  - ➡ major tax losses (CHF 3.8 billion for the Federation only)

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3. Special tax status

➢ The situation in Geneva

- ➢ 945 companies with a special tax status
  - ➡ 20'000 full-time jobs
  - ➡ contribution to value for CHF 4 billion
  - ➡ tax revenues to over CHF 1 billion
- ➢ Geneva **announced its intention** to establish a unique effective corporate income tax rate of 13 % for all the companies instead of approximately 23 %.
- ➢ The losses for the canton would be of CHF 460 million at cantonal and communal level.

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3. Special tax status

➢ The situation in Zurich

- ➢ 1600 companies with a special tax status
- ➢ Following the decision of Geneva, Zurich plans to establish a unique effective corporate income tax rate between 14 and 16 % for all the companies instead of approximately 21 %.
- ➢ The losses for the canton would be of CHF 850 million at cantonal and communal level.
- ➢ The losses of Geneva and Zurich would have an significant impact on the intercantonal tax equalization and amendments will be necessary. Indeed the following chart shows clearly the coming difficulties.

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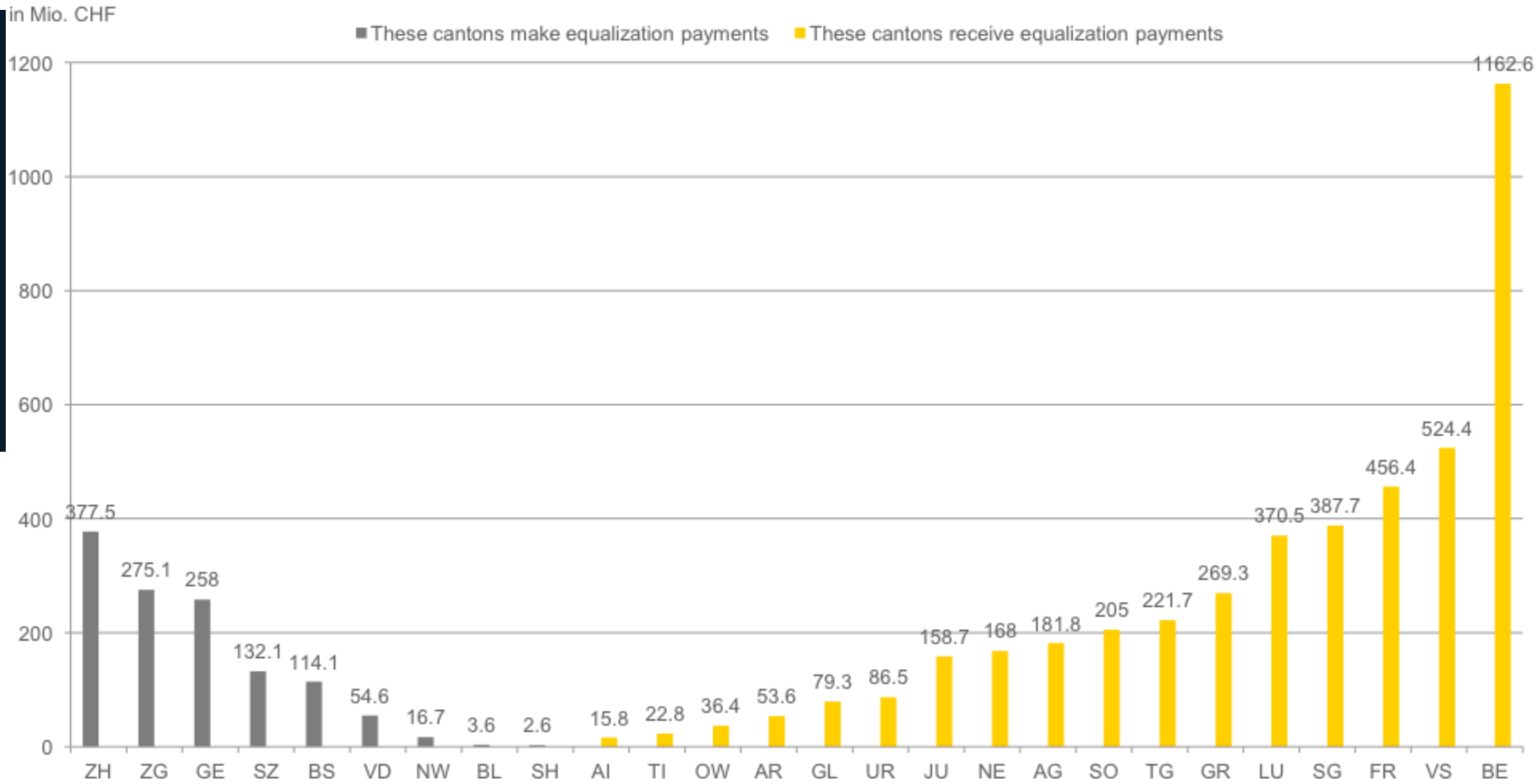
3. Special tax status

➢ Equalization payments 2013



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3. Special tax status

- **The Financing**

- Who will have to pay the billions of losses regarding the decrease of the corporate income tax rate ?
  - Increase of VAT
  - Compensation of the tax losses through the equalization
  - Increase of the tax for individual
  - Decrease of the federal tax for corporate

- Is it possible to implement a global decrease of the corporate income tax politically and would that be sufficient for the EU ?
  - feasibility of solution is uncertain

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3. Special tax status

- **Two examples: Luzern & St-Gallen**
- Between 2008 and 2011, Luzern reduced its corporate tax rate by half to become one of the lowest tax cantons for corporations (approx. 16% incl. Federal tax)
  - Citizens of City of Luzern had to vote on an increase of individual taxes of 3% to avoid significant cuts in city contributions
- Between 2006 and 2009, St-Gallen reduced its taxes to about 17% income tax.
  - Led to approx. CHF 550 Million of tax losses
  - Budget cuts in all areas
  - Increase of tax rates in 2012 and probably in 2013
  - Cantonal tax rate will be set to the same level as in 2007…

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3. Special tax status

➢ The other possibilities

➢ Instead of reducing the corporate income tax rate, there are other possibilities.

- The license box regarding companies with substantial license income
- The modified license box
  - IP-Box
  - Interest-Box
  - Trading-Box

➢ The modified license box could replace the mixed company status in some ways.

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4. Double taxation treaty on inheritance tax with France

➢ Context

➢ A double taxation treaty on inheritance tax exists between France and Switzerland since 1953.

➢ In 2011, France explains to Switzerland that this treaty does not match any more with his internal law.

➢ Without amendment of the old treaty, France threatens to abolish it.

➢ A project of double taxation treaty on inheritance tax is initialized on July 5th, 2012.

➢ Strong reaction from inside Switzerland ➡ new round of negotiation with France. Outcome uncertain.

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4. Double taxation treaty on inheritance tax with France

➢ Major changes

➢ The direct heirs (son, daughter) of a domiciled person in Switzerland was always taxed in Switzerland at a rate between 0 % and 7 % wherever their residence was.

➡ The new treaty plans to tax the French heirs of a person domiciled in Switzerland if they have been residents in France during 6 years over the last 10 years.

➡ For direct heirs, tax rate on inheritance in France can reach 45% if the inheritance amount is higher than EUR 1.8 million

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4. Double taxation treaty on inheritance tax with France

➢ Major changes

➢ In the old treaty, if a Swiss resident owns indirectly a real estate in France through a company, the transfer of shares of the company were taxed in Switzerland as movable assets.

➡ with the new treaty, the real estate transfer is directly taxed in France non considering the holding structure.

➢ The movable assets in France of a Swiss resident were taxed in Switzerland except the furnitures (beds, tables and pictures).

➡ the notion of furniture includes now the jewels, the golden ingots and precious stones. However, shares and bank accounts are still taxed in Switzerland.

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4. Double taxation treaty on inheritance tax with France

- **The future of the agreement**

- In Switzerland many find the treaty unfair and unfavorable for the country.
- In order to enter into force, the members of Parliament have to grant their approval to this treaty.
- If accepted the agreement will enter into force on January 1st, 2014.

→ there is a risk that other countries want the same kind of agreement.

- If refused there will be no treaty → risk of double taxation.

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5. Taxation of RSU and SOP

➢ **Entry in force: January 2013**

What are the real changes ?

- Exit tax abolishment
- Pro-rata taxation
- Tax at source withholdings for non-residents
- Employer's obligation to collect and pay taxes for non-residents

➢ Example of the pro-rata taxation

An employee receives stock options which are vested for a period of 8 years. After the vesting period the value of the stock options is CHF 200 and the employee has worked 4 years in Switzerland and 4 years in the United Kingdom.

The taxable income in Switzerland will be CHF 100. Indeed, the total taxable income is CHF 200) but during 4 years the employee has worked in the United Kingdom. The income is divised by 2 (4/8) → CHF 100.

! Tax is due even if the employee is no more resident in CH!

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6. Separate taxation for married couples

➢ Amendments to the LIFD

- Following a Federal Court decision, the Federal Council wants a fairer taxation for married couples and proposes to modify the LIFD.
- In fact, married couples and non married couples are taxed differently.

⇨ Separately for non married couples (2 tax returns)

⇨ Joint income for married couples (1 tax return)

- This situation creates a disadvantage for the married couples with a taxable net income above CHF 80’000 and the retired married couples with a taxable income above CHF 50’000.
- The amendments concern only the federal income tax (IFD) and do not apply to the cantonal and communal income tax.

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6. Separate taxation for married couples

➢ The main propositions

for married couples with two incomes

➢ Taxation of these couples with the current method

➡ addition of all income and calculation of the tax with the tax scale for married couple

➢ Separate taxation of married couples

➡ The tax is calculated in two times, first with the income of the husband and then with the income of the spouse by using the tax scale for single person. A comparison calculation will be done by adding the two income, taxed at tax rate for married couple. These calculations are made by the tax authorities.

➡ The final federal income tax is the smaller amount.

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6. Separate taxation for married couples

➢ The main propositions

for married couples with one income

➢ The separate taxation will have no effect on couples with only one working. This is why a solution for married couples with one income has been found.

⇒ special deduction of CHF 8’100 for couples with one income

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6. Separate taxation for married couples

➢ Financing

➢ The proposition of the Federal Council to reduce the disparity between married couples and non married couples would cost approximately **CHF 1 billion** per year (Federation only).

➢ In order to finance its proposition the Federal Council proposes:

➡ raise the VAT rate by 0.3 %

➡ no adjustment of tax scale to the inflation until it increases by 5.8%

➡ reduce some tax deductions if necessary

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