

TAX UPDATE

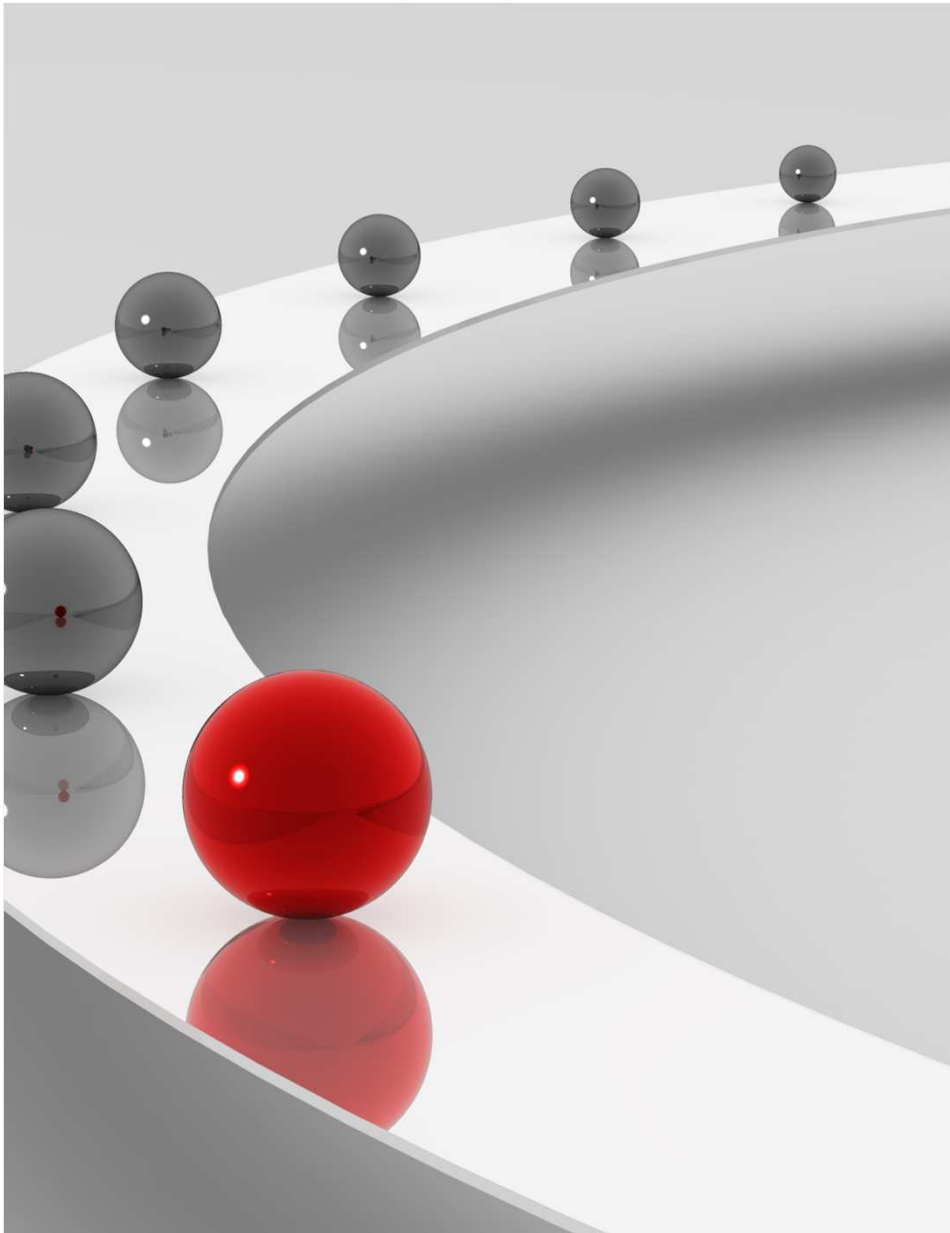
Geneva, January 26, 2017

IFMA



AGENDA

1. Corporate tax reform III
2. Spontaneous exchange of information on tax rulings
3. Country-by-country report
4. Withholding tax – Notification procedure
5. Limitation of the tax deduction on travel expenses / Private use of company car
6. Wrap-up / Question & Answers



01

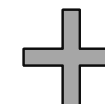
CORPORATE TAX REFORM III

CORPORATE TAX REFORM III

Draft law adopted by the Swiss Parliament (June 2016)

Measures agreed by the Geneva State Council on August 2016

Tax measures			Geneva proposal
Abolition of the cantonal tax regimes	✓	✓	Global tax benefits not higher than 9% (min ETR 13%)
Transitory measures during a five-year period	✓	✓	ETR 13% on hidden reserves
Introduction of patent box at cantonal level	✓	✓	Max 10% tax exemption
"Step-up mechanism" & disclosure of hidden reserves	✓	✓	On arrival / departure
Possibility for cantons to introduce an additional deduction for R&D expenditures	✓	✓	Max 150%
Lowering of equity tax	✓	✓	Full offset of the profit tax on equity tax
Harmonization of the taxation of dividends for individuals	✓	✓	Max 30% tax exemption
Notional interest deduction	✓	✗	
Swiss PE of a foreign company may benefit from tax credit	✓	✓	
Abolition of the issuance stamp study	Out of scope – separate project		
Tonnage tax	Out of scope – separate project		

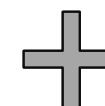


**GENEVA
expected
tax rate of
13.49%
(ETR)**

CORPORATE TAX REFORM III

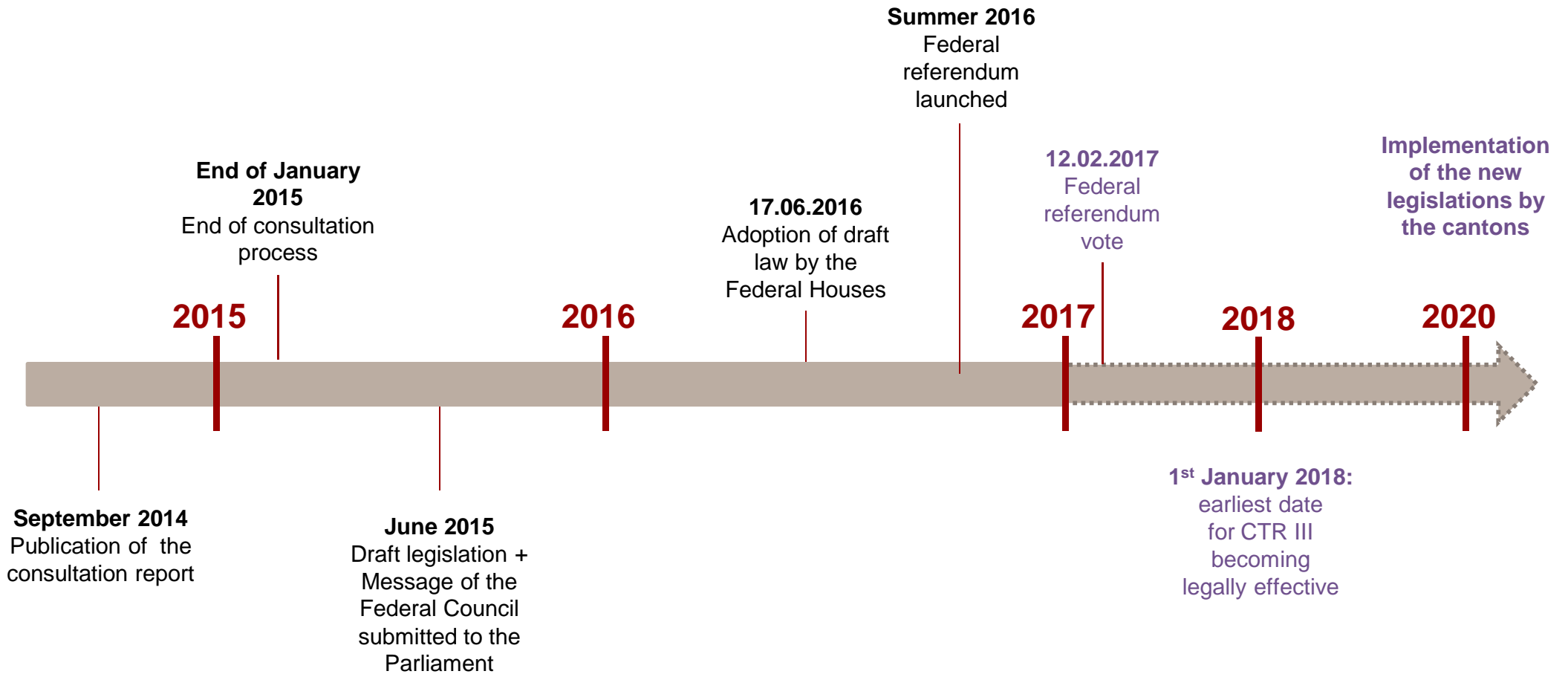
Draft law adopted by the Swiss Parliament (June 2016)
New cantonal law agreed by the cantonal vote on March 2016

Tax measures			Vaud proposal
Abolition of the cantonal tax regimes	✓	✓	
Transitory measures during a five-year period	✓	✓	
Introduction of patent box at cantonal level	✓	✓	
“Step-up mechanism” & disclosure of hidden reserves	✓	✓	
Possibility for cantons to introduce an additional deduction for R&D expenditures	✓	✓	
Lowering of equity tax	✓	✓	
Harmonization of the taxation of dividends for individuals	✓	✓	
Notional interest deduction	✓	✓	
Swiss PE of a foreign company may benefit from tax credit	✓	✓	
Abolition of the issuance stamp duty	Out of scope – separate project		
Tonnage tax	Out of scope – separate project		

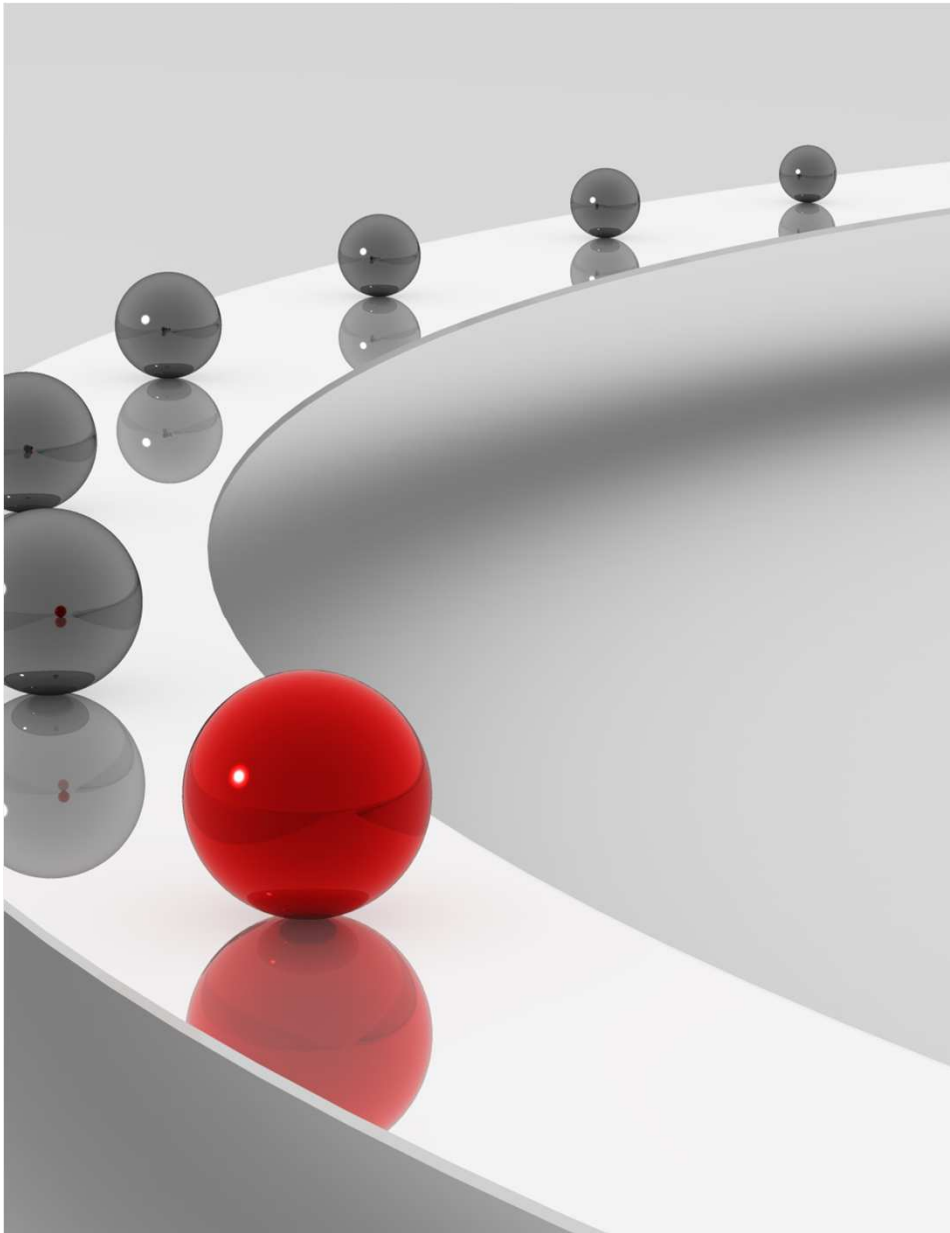


Vaud tax rate of 13.79% (ETR)

EXPECTED TIMELINE UNTIL IMPLEMENTATION



2-year transitional period for amendment of cantonal legislation



02

SPONTANEOUS EXCHANGE OF INFORMATION ON TAX RULINGS



SPONTANEOUS EXCHANGE OF INFORMATION ON TAX RULINGS - INTRODUCTION

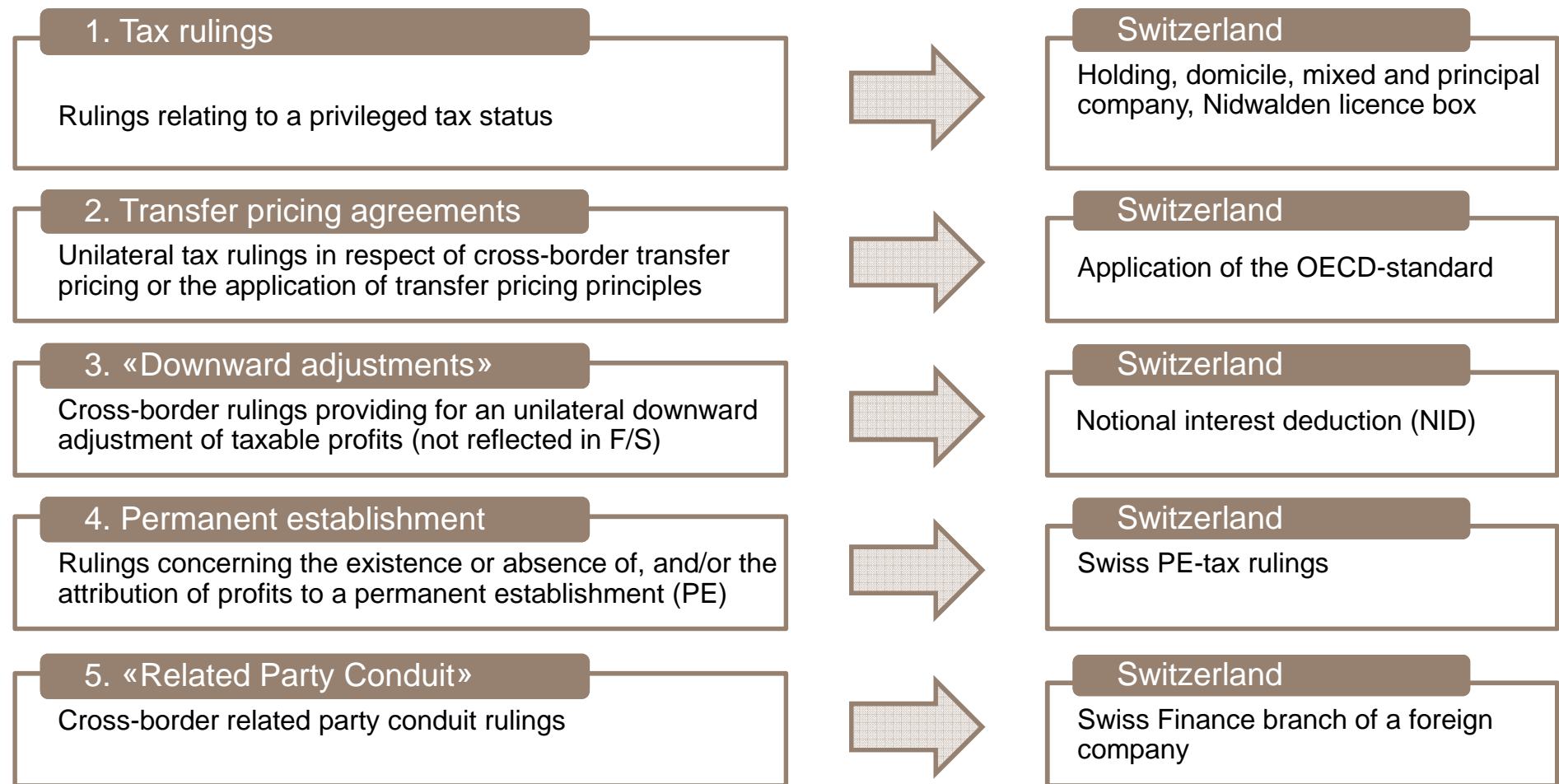
- Since January 1, 2017 the spontaneous exchange of information on tax rulings is in force
- **The first information will be exchanged with foreign states as from January 1, 2018**
- **Multinational entities (MNE) as well as small and medium-sized enterprises (SME) with international business activities** are concerned by the exchange
- Spontaneous exchange of information bases on BEPS action 5 of the BEPS project (Base Erosion on Profit Shifting) of OECD, G20-states and other states
- Goal of BEPS action 5:
 - Improving the transparency
 - Avoiding of double-non taxation
 - Avoiding of profit shifting

SPONTANEOUS EXCHANGE OF INFORMATION ON TAX RULINGS – RULINGS CONCERNED BY THE EXCHANGE (1/2)

- According to the OECD-definition a ruling will be **subject** to the exchange if the following criteria are met:
 - Confirmation or guarantee must be given to a taxpayer upon request
 - The information relates to the tax consequences of a state of fact that the taxpayer has explained
 - The taxpayer must be able to refer to said information, confirmation or guarantee
- **Rulings on income and profit tax are concerned.** Rulings relating to stamp duty, transfer tax, VAT, tax on inheritance and donations, capital gain tax on real estate property are not affected
- **Existing rulings issued after January 1st, 2010 and still applicable on January 1st, 2018 and new rulings issued after January 1, 2018**

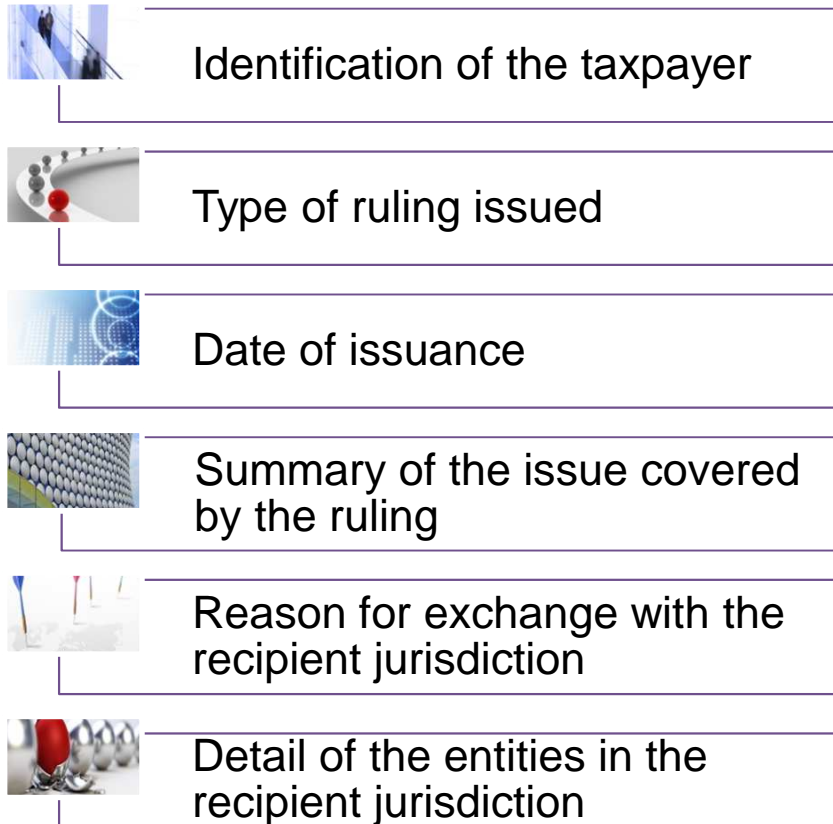
SPONTANEOUS EXCHANGE OF INFORMATION ON TAX RULINGS – RULINGS CONCERNED BY THE EXCHANGE (2/2)

BEPS framework for compulsory spontaneous exchange of information only applies to taxpayer-specific tax rulings. Five categories have been identified:



SPONTANEOUS EXCHANGE OF INFORMATION ON TAX RULINGS – WHAT INFORMATION WILL BE EXCHANGED (1/2) ?

- No exchange of the ruling itself
- Taxpayers have to fill in a special form and send it to the competent tax authority. The form will contain the following information:



- Exchange through the Swiss federal tax administration

SPONTANEOUS EXCHANGE OF INFORMATION ON TAX RULINGS – WHAT INFORMATION WILL BE EXCHANGED (2/2)?

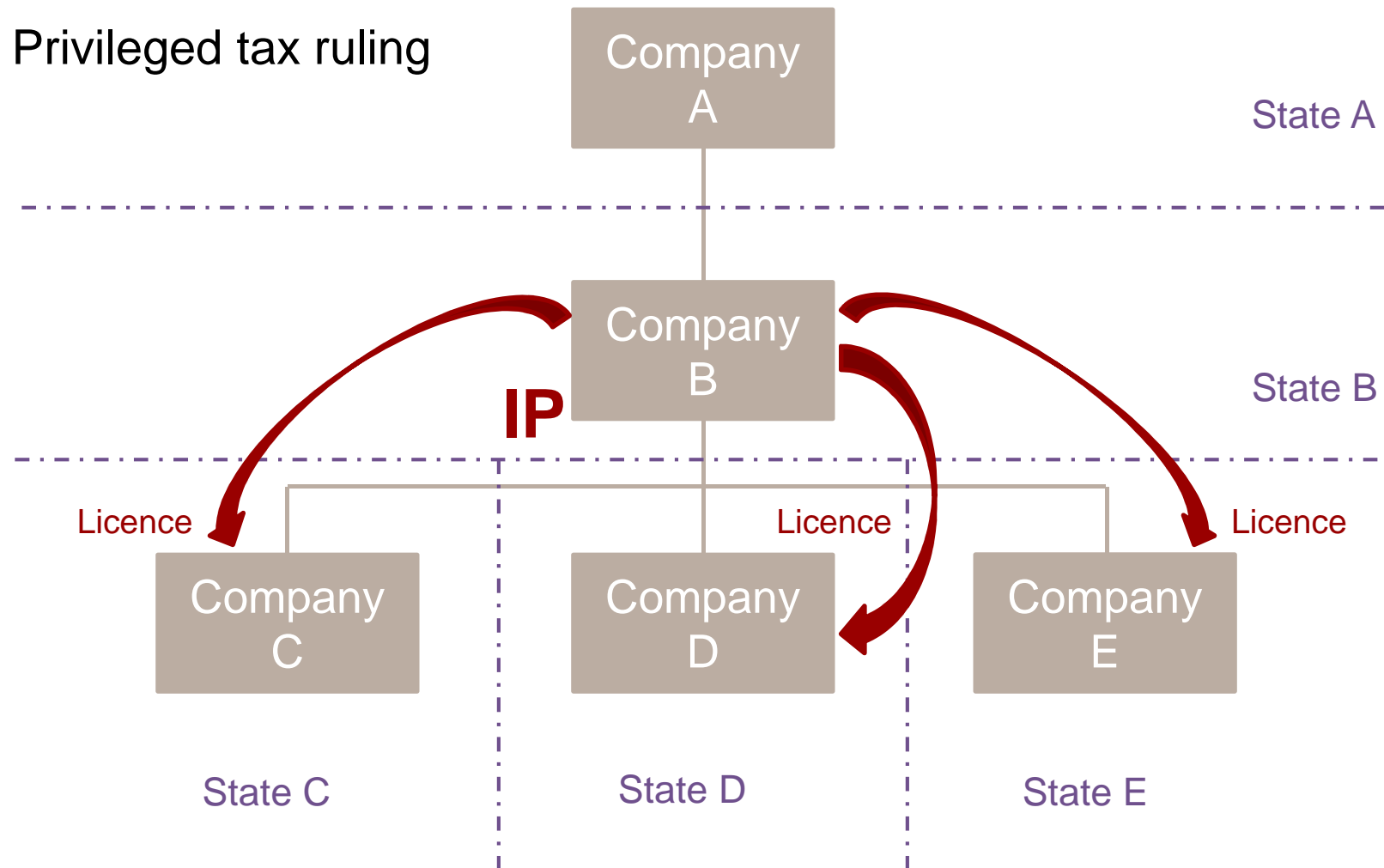
Template and instruction sheet for information exchange			
<i>All fields are mandatory unless otherwise indicated.</i>			
1. Ruling reference number, if any.		3. Date of issuance.	
2. Identification of the taxpayer and where appropriate the taxpayer's residence.		4. Accounting periods/tax years covered by the ruling.	
Taxpayer identification number (TIN) or other tax reference number			
Legal name of the entity		5. Type of ruling issued. Please check the appropriate box.	
Address	Street	Relating to preferential regime	
	Building (optional)	Unilateral advance pricing arrangement (APA) or other transfer	
	Suite (optional)	Downward adjustment ruling	
	Floor (optional)	Permanent establishment (PE) ruling	
	District Name (optional)	Conduit ruling	
	Post Office Box (optional)	6. Additional information regarding the ruling and the taxpayer.	
	Post Code	Transaction amount, if any	
	City	Entity's annual turnover	
	Country	Profit of the entity	
State/Province/Canton (optional)			
Taxpayer's main business activity (optional)		7. Short summary of the issue covered by the ruling ideally provided in one of the official languages of the Organisation for Economic Co-operation and Development (OECD) or other language bilaterally agreed. Where this is not possible this can be provided in the native language of the sending jurisdiction.	
Name of multinational enterprise (MNE) group, if different			
		8. Reason for exchange with the recipient jurisdiction.	
		Ultimate parent	<input type="checkbox"/>
		Immediate parent	<input type="checkbox"/>
		Related party with which the taxpayer enters into a transaction for which a preferential treatment is granted or which gives rise to income benefiting from a preferential treatment	<input type="checkbox"/>
		Related party with whom the taxpayer enters into a transaction covered by the ruling	<input type="checkbox"/>
		Related party making payments to a conduit (directly or indirectly)	<input type="checkbox"/>
		Ultimate beneficial owner of income from a conduit arrangement	<input type="checkbox"/>
		Head office of permanent establishment (PE) country	<input type="checkbox"/>



SPONTANEOUS EXCHANGE OF INFORMATION ON TAX RULINGS – WHICH COUNTRIES MAY OBTAIN AN EXCHANGE?

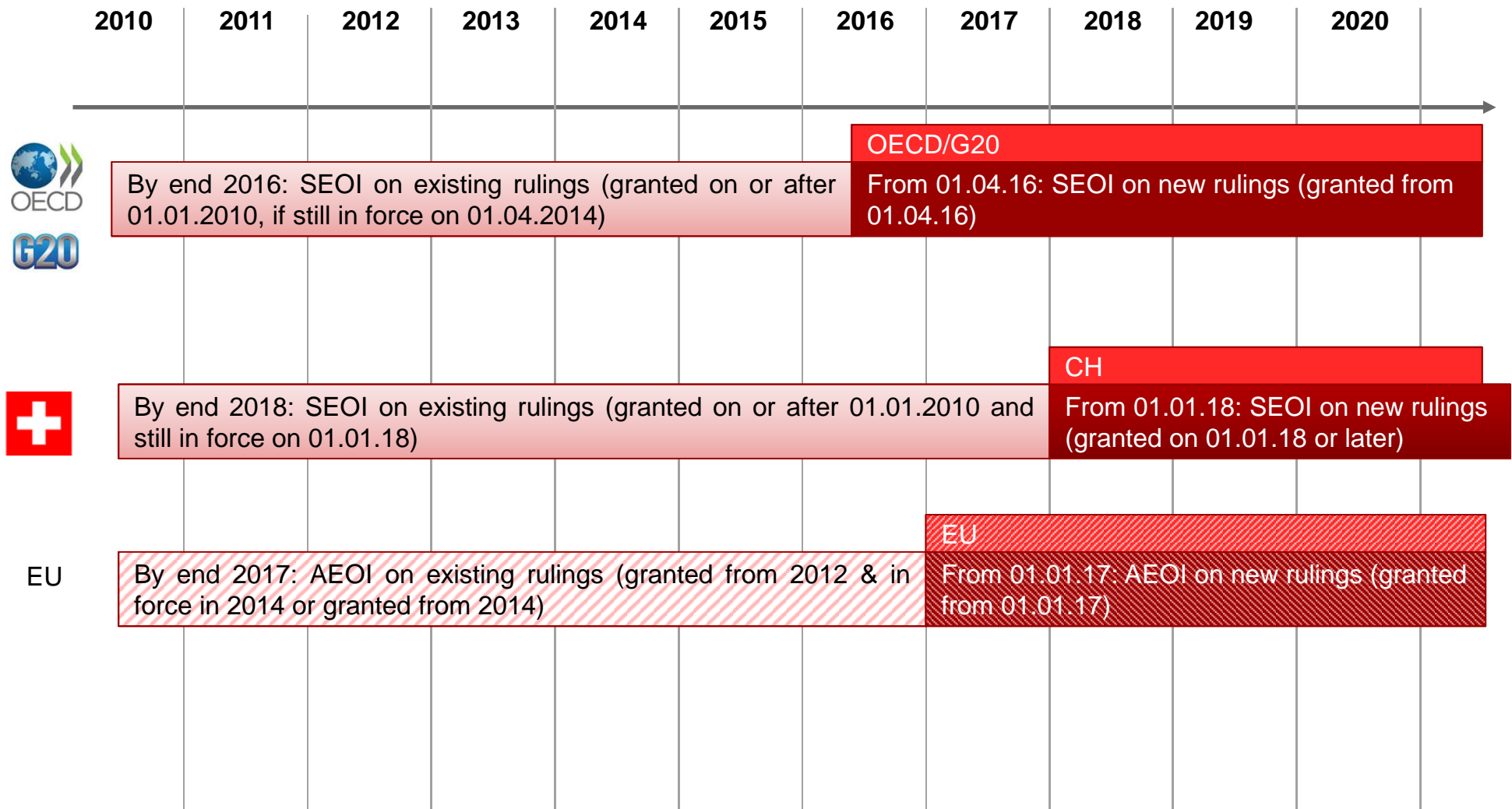
- State of the registered seat of the company which has direct control of the Swiss company
- State of the registered seat of the ultimate parent company of a group
- States of associated entities and PEs with which the taxpayer carries out transactions
- An entity is deemed to be associated when it holds directly or indirectly a participation of at least 25% in another entity or when a third party holds a participation of at least 25% in each of the two entities

SPONTANEOUS EXCHANGE OF INFORMATION ON TAX RULINGS – EXAMPLE

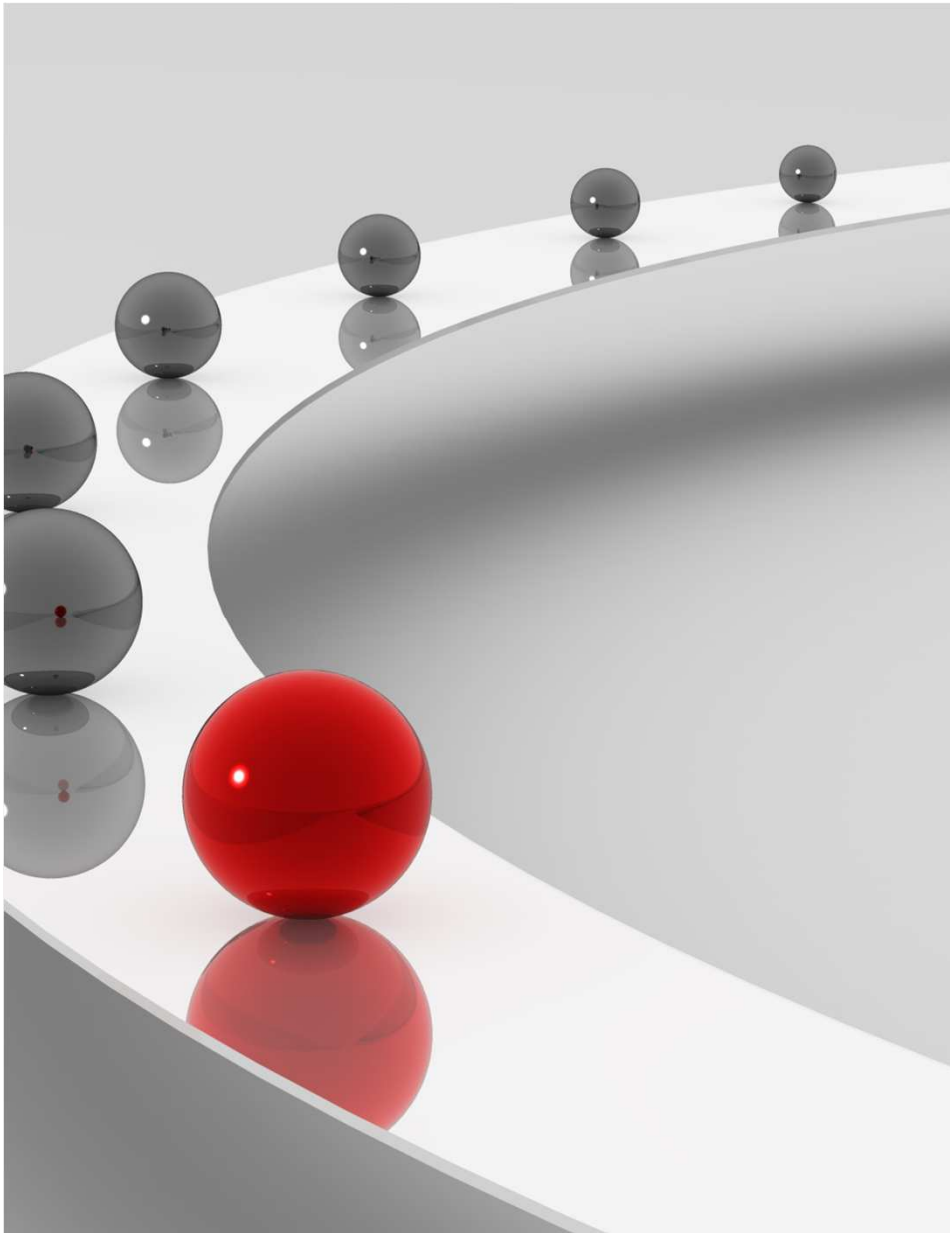


*Unless otherwise specified,
the participation is 100% hold*

SPONTANEOUS EXCHANGE OF INFORMATION ON TAX RULINGS - EXPECTED TIMELINE IN SWITZERLAND



Source : State Secretariat for International Financial Matters SIF



03

COUNTRY-BY-COUNTRY REPORT

COUNTRY-BY-COUNTRY REPORT

Goal: A tool for Transfer pricing risk assessment

Content

- **Allocation of income, taxes and business activity by jurisdiction**
 - revenues (related / unrelated party)
 - Profit / (loss) before income tax
 - income tax paid (cash basis and accrued)
 - number of employees
 - stated capital
 - accumulated earnings
 - tangible assets other than cash/cash equivalents

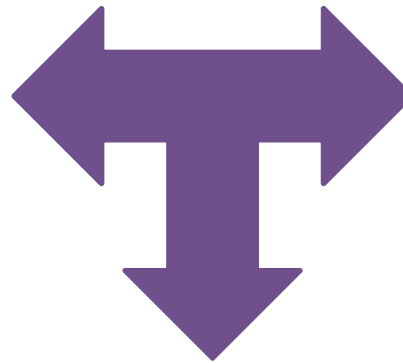
- **List of all the group entities per jurisdiction**
 - identification of each entity in a particular tax jurisdiction
 - indication of the business activities each entity engages in

COUNTRY-BY-COUNTRY REPORT

The country by country report (CBCR) is a new tax return.

- It will break down the taxable profit, the corporate income tax and substance elements by country
- It will be due for the tax years starting on or after January 1, 2016.
 - It will have to be filed within the 12 months following the end of the tax year.

MNE's having consolidated accounts, foreign locations and a revenue equal or more than
€750M
-> 15% of MNE-s covering 90% of CIT



To be filed by the **ultimate parent company** in most cases. The lack of filing of the CBCR will be subject to a fine in most countries.

Information will be exchanged
between tax authorities
starting in 2018.

EXPECTED TIMELINE IN SWITZERLAND

2018

2019

2020

2021

Step 1: Timetable for **filing** the CbC Report

1st CbC Report : information
related to fiscal year 2018

1st January 2018
entry into force of
the Swiss
domestic
legislation

MNE prepare/file the
1st CbC Report

31 December 2018
End of fiscal year

MNE prepare/file the
2nd CbC Report

31 December 2019
Filing 1st
CbC Report 2018

31 December 2020
Filing 2nd
CbC Report 2019

Step 2: Timetable for the **exchange** of the CbC Report

30 June 2020
Exchange of 1st
CbC Report 2018

31 March 2021
Exchange of 2nd
CbC Report 2019

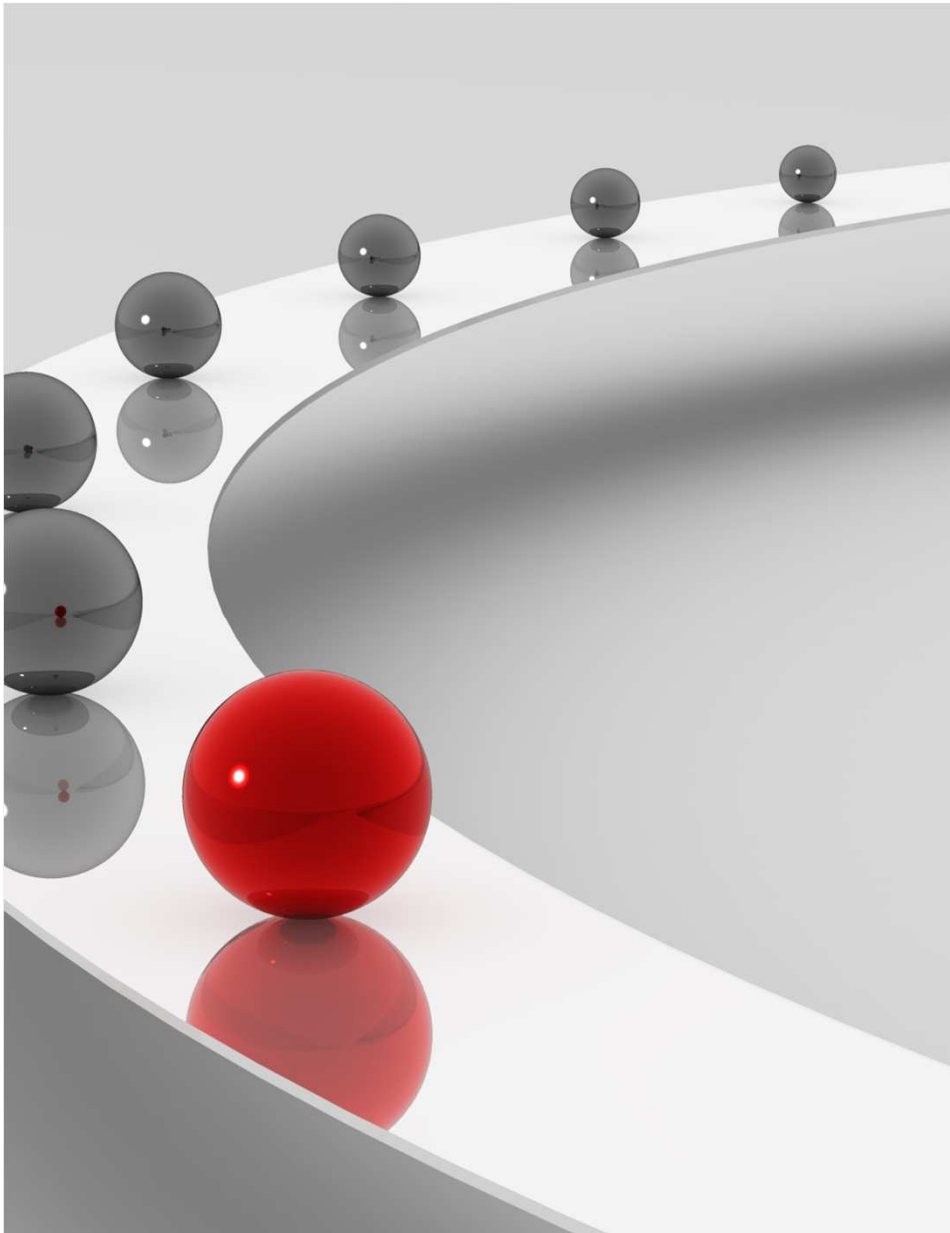


SWITZERLAND – TRANSFER PRICING PRINCIPLES

- Currently, the Swiss tax law:
 - (1) provides that the transactions should respect the arm's length principle
 - (2) does not include a definition of the arm's length principle
 - (3) does not address the issue of transfer pricing between related parties
- No specific requirement concerning the transfer pricing documentation

In case of transactions between related parties, the taxpayer should be able to demonstrate that the transfer prices used are based on sound economic and commercial reasoning

- Certain circular letters of the FTA and case law provide guidance (e.g. circular letter on safe harbor interest rates)
- Switzerland applies the methods described by the OECD Transfer Pricing guidelines



04

WITHHOLDING TAX – NOTIFICATION PROCEDURE

WITHHOLDING TAX – NOTIFICATION PROCEDURE (1/2)

- Basically the distribution of dividends from a SwissCo is subject to a 35 %-Swiss withholding tax (“WHT”)
- Swiss WHT is levied by the payer and may only be recovered by means of a refund
- Under certain circumstances, the Swiss WHT does not have to be levied and the mere declaration of the payment towards the Swiss federal tax administration is sufficient
- In order to benefit from the notification procedure the relevant documents had to be filed within 30 days from the due date of the dividend
- **Old practice:** The 30 days deadline was considered as a forfeiture deadline with the consequences that the notification procedure was refused in case of late filing. In such a case, the distributing company had to pay
 - 35 %-Swiss WHT, and
 - Late payment interest of 5 % p.a.

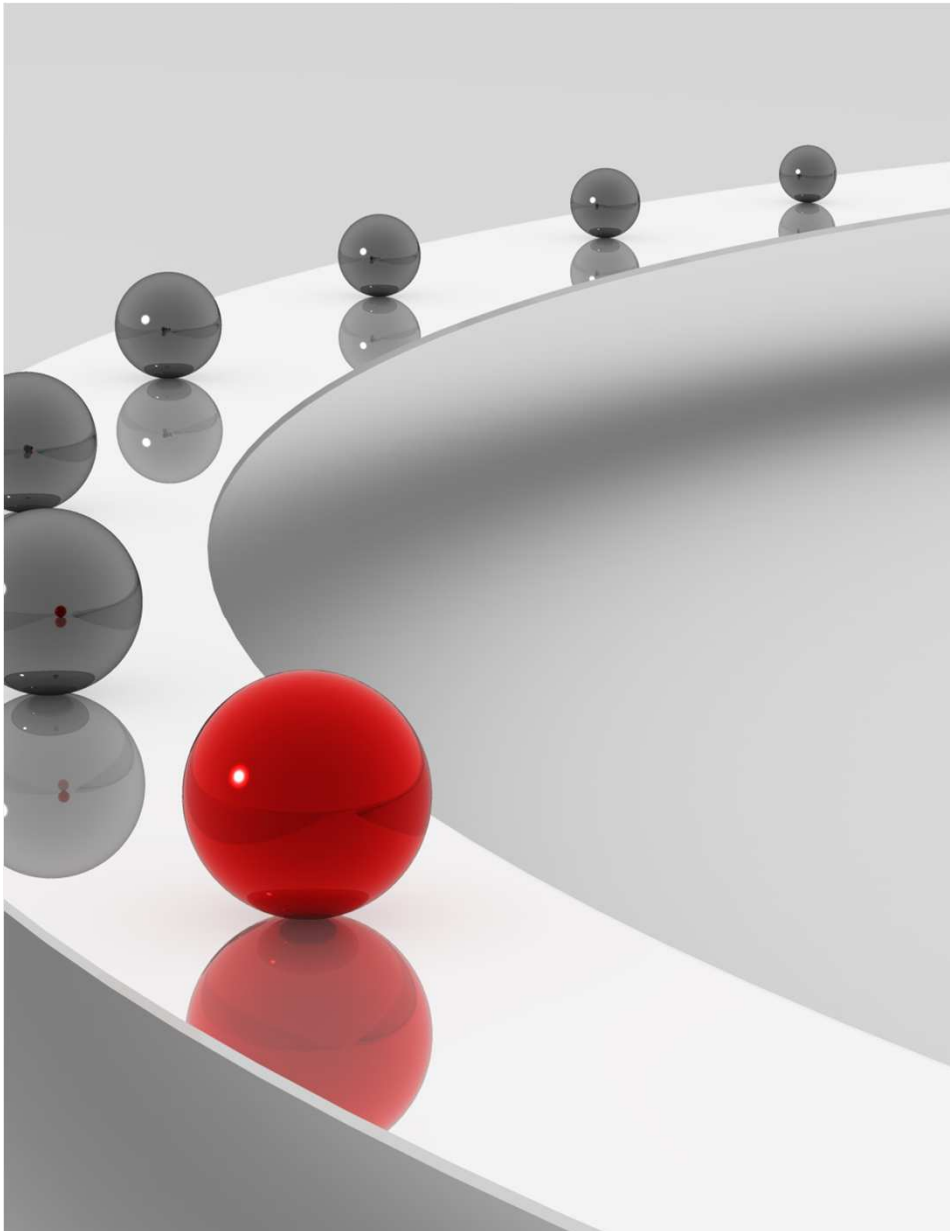
WITHHOLDING TAX – NOTIFICATION PROCEDURE (2/2)



New practice

- The 30 days deadline is an administrative deadline
- No late payment interests
- Penalty per late filing (not yet finally determined)
- Retroactive effect of the law on January 1, 2011
- The referendum period ended on January 19, 2017. No referendum has been launched*
- The federal council will determine the effective date of the new practice

*Source: Federal Chancellery on January 23, 2017



05

LIMITATION OF THE TAX DEDUCTION ON TRAVEL EXPENSES

PRIVATE USE OF COMPANY CAR

LIMITATION OF THE TAX DEDUCTION ON TRAVEL EXPENSES

- Limitation of the deductibility of the travel expenses for employed individuals (i.e. necessary travel between home and workplace) resulting from the FABI initiative

Since January 1st, 2016

➤ *At federal level:*

Max deduction of CHF 3'000/year

➤ *At cantonal/communal level:*

Amendment of the Tax Harmonization Act allowing cantons to apply a cap on deductible travel expenses. The cap will be determined on a Canton-by-Canton basis

- Geneva: max deduction of CHF 500/year
- Vaud: no cap

PRIVATE USE OF COMPANY CARS (1)

Tax treatment until December 31st, 2015

- Private use of the car = non-cash benefit (corresponding to 9.6% of the acquisition price of the car, excluding VAT)* to be reported in the salary certificate (code 2.2) + tick box F in case of use of the car for the travel to work**
- Non-cash benefit covers the private use of the company car (except the journey from home to work)

* Minimum CHF 150 per month

** The employee cannot claim any business expenses in his/her tax return.

Tax treatment since January 1st, 2016

- Private use of the car = non-cash benefit (corresponding to 9.6% of the acquisition price of the car + **special equipment***, excluding VAT)* to be reported in the salary certificate (code 2.2) + tick box F in case of use of the car for the travel to work
- Drivers of company cars must include their commuting expenses over and above the federal cap of CHF 3,000 as a taxable benefit-in-kind in their tax returns (number of km multiplied by CHF 0.70 per km x 220 days)
- Self-employed individuals are not affected by these changes
- No consequence for Swiss social security contributions
- The employer must confirm a proportion of business travel for each employee in section 15 of the salary statement

* Minimum CHF 150 per month



PRIVATE USE OF COMPANY CARS (2)

➤ Definition of business travel:

(1) effective days spent for business travel

employee do not travel by company car to their usual permanent place of work before or after visiting client, home office, unpaid leave, working abroad, etc.

or

(2) flat rate figures prescribed by the Confederation (rate by functions/professions)

➤ The employee can reduce the additional taxable income for use of company car for travel to work by the proportion of business travel

PRACTICAL EXAMPLE (1)

An employee working as sale representant in real estate benefits from a company vehicle to travel from his/her domicile to the workplace and for private use.

Salary certificate

- 9.6% of the purchase price, including vehicle special equipments (VAT excluded), must be declared on the salary certificate
- The «F» box, indicating the free transport from the domicile to the workplace must be ticked
- The percentage of external-service must be indicated under n°15 of salary statement

Social security

- 9.6% of the purchase price, including vehicle special equipments (VAT excluded) is subject to social security contribution

Individual tax return

- Additional fictitious income to be declared, corresponding to the private use of company car for the travel from domicile to workplace
- Deduction of travelling expenses, according to FABI initiative, the limitations are :
 - Direct federal tax: deduction capped at CHF 3'000/year, from 01.01.2016
 - Direct cantonal and communal tax: deduction capped with variations depending on the canton

PRACTICAL EXAMPLE (2)

An employee working as sale representant in real estate benefits from a company vehicle to travel from his/her domicile to the workplace and for private use.

Distance from domicile to workplace:

30 km

% of external-service:

40% (rate figure prescribed by the Confederation for a sale representant in real estate)

Working days:

132 days (60% of 220 days)

Additional taxable income:

132 (working days) x **30** (km) x **2** x **0.70** (CHF) = **CHF 5'544**

Tax impact (at federal level):

Additional taxable income	CHF 5'544
./. Limited deductibility acc. to FABI	- <u>CHF 3'000</u>
= Additional net taxable income	CHF 2'544



WRAP-UP



QUESTIONS / DISCUSSION

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