SWISS INVESTMENT REPORT* 23

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* The Swiss Investment Report is provided by Wenfei Attorneys-at-Law Ltd. ("Wenfei"), a Swiss law firm which has gained extensive experience in providing services in Greater China.

The Swiss Investment Report is especially designed for Chinese Investors, who are intending to extend their business to Switzerland or Europe or are already doing business in Switzerland.

The Swiss Investment Report provides background information on the Swiss investment-related legal framework as well as information on current developments in the Swiss legislation from a foreign investor's perspective.

The most important federal decrees as of 2020 – An overview

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I. Introduction

The following provides an overview of the most important new enactments and amendments to existing laws that have entered into force in Switzerland on January 1, 2020. The most important changes occur in the areas of the law on statute of limitations, the regulation of the retirement funds (AHV), the financial market regulations and the tax regulations for holding companies.

II. Revision of the law on the statute of limitation

The Federal Council, at its meeting on November 7, 2018, put the revised statute of limitations into force on January 1, 2020. The new legal provisions intend to improve the situation of victims of personal injury which only become evident long after the damaging event. The revision goes back to the cases of victims of asbestos poisoning whose claims, in many cases, were time-barred. The ECtHR had held in one case that the ten-year absolute time limit was too short.

Therefore, claims for damages or satisfaction now become time-barred within the absolute limitation period of 20 years after the date on which the loss or damage was caused or ended. This means that injured parties of late damages will no longer be prevented from asserting their claims by the statute of limitations, as it was previously the case. The 20 year limitation period only applies in the event of death or personal injury.

In addition, the relative limitation period was subject to the revision too. The previous one-year time limit was extended to three years for obligations in tort and unjust enrichment law. In other words, claims of injured parties now become time-barred after three years after they became aware of their claims, the loss or the damage and the identity of the liable person.

Furthermore, not only the time limits but also the waiver, prevention and suspension of time limits have been revised. In total, no fewer than 30 federal laws had to be amended or adapted in the course of the revision.

III. Tax Reform and AHV Financing (TRAF): Federal Act and Ordinances

As of January 1, 2020 the old tax regime, that was no longer in line with international standards, was replaced with the complete entry into force of the new Federal Act on Tax Reform and AHV Financing (TRAF). The Federal Council, during its meeting on November 13, 2019, approved three ordinances to the TRAF. These three ordinances contain the amendments concerning the tax component.

The main amendments for companies are:

- *The abolition of cantonal tax privileges*: at a federal level status companies will continue to pay full profit tax. On a cantonal level, they previously paid a reduced pro
- fit tax or no tax on profit at all. This tax privilege is abolished.
- *Patent box*: Profits from patents and similar rights will be taxed at a reduced rate. The cantons must tax at least 10 % of these profits.
- *Additional deductions for research and development*: In order to promote research and development, the cantons may apply a deduction by weighting the R&D expenditure no more than one and a half times.
- *Deduction for self financing*: The cantons may permit an interest deduction on equity capital if the cantonal capital's effective profit tax burden imposed by the confederation, canton and commune is at least 18.03 %.
- *Relief restrictions*: The tax relief based on the patent box, additional deductions for R&D and the deduction for self-financing may not exceed 70 %.
- *Capital tax adjustments*: The capital attributable to financial interest, patents and similar rights as well as intra-group loans may be included by the cantons at a reduced rate in the capital tax calculation.

- *Disclosure of hidden reserve*s: Companies that relocate their headquarters to Switzerland can benefit from additional depreciation in the first few years. If relocating headquarters abroad, an exit tax will be due.

- *Extension of the flat-rate tax credit*: The flat-rate tax credit prevents international double taxation. Swiss permanent establishments of foreign companies should now be entitled to it as well.

Other amendments affect the shareholders. To begin with, the dividend taxation will be increased. Shareholders, who hold at least a stake of 10 % of the company's capital, now pay federal income tax on 70 % of the income resulting from financial interest and at least 50 % are subject to cantonal taxes. Further, companies listed on the *Swiss Stock Exchange* can repay reserves from capital contribution to their shareholders tax-free, only if they distribute at least an equivalent number of taxable dividends. Finally, profit from the sale of shares will generally remain tax-free. However, if a person sells shares to a company controlled by that person, the exemption does not apply.

Furthermore, the regulation will create additional funds of about CHF 2 billion per year in favor of the old-age and survivor's pensions (AHV). Companies (employers) and insured persons (employees) will contribute 0.3 percentage points more off the salaries. The additional contributions are split equally (each 0.15 %) between employers and employees. In total they contribute additional CHF 1.2 billion. The Confederation itself, will give its share in the form of the so-called demographic-percentage off the value added tax (CHF 530 million) and an increased contribution the AHV of CHF 300 million.

According to the Federal Council and the Parliament, the new TRAF is a balanced compromise between keeping up an internationally compliant and attractive tax system for companies on the one hand, and an immediate action to secure the pensions of the AHV on the other.

IV. New Financial Services Act (FinSA) and New Financial Institutions Act (FinIA)

In the year 2012, the Swiss Federal Council mandated the Federal Department of Finance (FDF) in co-operation with the Federal Department for Justice and Police (FDJP) and the Swiss Financial Supervision Authority (FINMA) to draft new comprehensive legal regulations for financial products and service providers. The Federal Council of States as well as the Federal National Council adopted the new laws on June 15, 2018. Both new laws a entered into force on January 1, 2020.

Please refer to our publication on the on the FinSA and the FinIA for a detailed introduction to the new laws, newly regulated fields and the effects on foreign providers and customers.

V. Various other legislative changes

Besides the amendments and new laws discussed above, a variety of other amendments came into effect on January 1, 2020.

Amongst others, for passenger cars, a target value of 95 grams of CO^2 per kilometer now applies. Importers who do not reach this average value will pay a penalty. Homeowners can now spread expenses for energy-saving investments and demolition costs over three consecutive tax periods. Cancer diseases are recorded completely and uniformly in the national cancer-registry throughout Switzerland. The fungicide *Chlorothalonil* is now prohibited. The shredding of living chicks is now also prohibited. So far, male animals have been killed in some hatcheries using this method. Killing with CO^2 is still permitted. And, last but not least, the blood-alcohol limit for rubber boat drivers is abolished.

VI. Conclusion

In conclusion, the amendment to the statute of limitations law improves the legal enforceability of claims for damages or compensation for personal injury and thus strengthens the rights of those affected. The relative time limit is now 3 years, the absolute time limit is now 20 years.

Further, cantonal tax privileges for holding companies and other status companies will be abolished. This is Switzerland's response to international pressure. At the same time, internationally accepted privileges are being introduced, including the *Patent Box* and the increased research deduction.

Together with the vote on the tax reform, the electorate has approved the AHV bill. As a result, the AHV contribution rate for employers and employees will increase by 0.3 percentage points. Contributions are paid half by employees and half by employers.

In addition, investor protection will be improved in certain areas. The Financial Services Act regulates how clients must be informed about financial instruments. With the Financial Institutions Act, independent asset managers are now also subject to supervision.

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