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NewsLetter

English

Value Solutions
Treuhand & Unternehmensberatung

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1. Digital document management

Digitalization is everywhere and becoming increasingly important in the public perception; switching to paperless document management is on the to do list over the coming months and years at nearly every company. Digital transformation in accounting involves increasing automation of procedures.

In practice, however, especially at SMEs, there is a degree of (legal) uncertainty about digital change - particularly when it comes to moving to digital document management.

This is what the law says:

Article 958f(III) of the Code of Obligations stipulates as follows: “Business books and accounting vouchers may be kept on paper, electronically or in a similar manner, provided they can be matched up to the underlying transactions and situations and easily made legible again at any time.”

What this might mean in practice and what conditions have to be met is governed by the Accounts Ordinance (AccO, Section 3, Articles 5-10), which states that the following conditions must be met:

- Availability and readability (Article 6)
  - Business books and accounting vouchers must be stored in such a way that they can be consulted, checked and made legible without aids until the end of their retention period (which may be up to 25 years, e.g. in the case of real estate gains tax).
- Separation of archived and current information (Article 7)
  - Archived information must be separated from current information in a way that allows it to be distinguished and permits direct access to archived data.
- Protecting archived information against unauthorized access (Article 8)
  - A systematic inventory of archived information must be kept and access and consultation recorded in order to protect against unauthorized access.
- Inalterability (Article 9)
  - Any subsequent amendment to a document must be demonstrable and traceable.
- Completeness and accuracy (Article 10)
  - The entire content of a document must be scanned, so as to ensure it is complete and accurate. This includes, for example, reverse sides, colored details such as yellow lettering, etc.
- Logging the transfer of data (Article 10)
  - If data is transferred to another data medium, this must be logged.

Digital document management offers a host of benefits. Central retention and management can save valuable time, with immediate access to data making it easier to look for documents, regardless of where you are working from. This means business processes can be structured to be quicker and more efficient. Printing and distribution costs can also be saved, not forgetting the ecological considerations widely expected today.

Finally, it is in principle permitted to scan paper vouchers, destroy the originals and retain the vouchers only in digital format. To make a full switch to digital document management, however, needs a cleanly implemented process that meets all the requirements set down in the Code of Obligations and the Accounting Ordinance.

2. Abolition of bearer shares

On June 19, 2019 the National Council and Council of States agreed to abolish bearer shares. This was to avoid Switzerland being blacklisted by the OECD.

The justification from the OECD was that bearer shares are anonymous and so can be used for tax evasion and money laundering. Bearer shares must be converted into registered shares within 24 months. This will require companies that still have bearer shares in issue to amend their articles of association. The process should therefore be started in good time.

3. New taxation rules for companies with international operations

Following closely on from the approval of the STAF tax reform, Switzerland is already having to face the next tax challenges – implementing the global rules on group taxation. This is the objective of the OECD and the G20 in BEPS (base erosion and profit shifting) Actions 8-10, and of the EU in ATAD I and II. Firms operating globally should be taxed partly at the place of consumption (as with VAT) instead of solely at the place of value creation.

The OECD intends to bring in an international minimum tax rate at the same time. Rumors indicate a rate of 10-12%. A minimum tax rate of this order of magnitude would be bearable for Switzerland. Nothing has been finalized, however. Export-focused economies like Switzerland will have to give up tax base and would be the losers under this reform. It is almost inconceivable that Switzerland will not go along with this, since the negative consequences would be too great. In theory every country is sovereign, but 'in practice Bern can only attempt to limit the damage in the relevant OECD working parties'; the same applies to the cooperation with the EU. The OECD measures should come into effect as early as 2022.

The G20 has announced its next meeting for further discussions will be in July 2019, while many of the measures in ATAD I and II have been in force since January 1, 2019: interest deduction arrangements, general anti-abuse provisions and CFC rules. Exit taxation and hybrid mismatches can be expected in 2020. These measures apply to all companies subject to taxation in the EU and may result in double taxation despite a DTA.

What impact will the reform have on national taxation?

Billions are expected to be lost in tax revenue, hence long overdue tax reforms such as the abolition of stamp duty will be delayed or may not take place at all. If the international minimum tax rate is raised more than expected, some cantons would have to increase their tax rates.

4. Referendum approves Tax Reform and AHV Financing STAF

The Federal Act on Tax Reform and AHV Financing was approved on May 19, 2019. The risk of Switzerland being blacklisted by the OECD is therefore no longer an issue. Here once more is a summary of the main points of the reform:

- Abolition of tax privileges (holding companies, mixed companies, domiciliary companies, principal companies and Swiss finance branches)
- Salary contributions to finance the AHV raised by 0.3% from 8.4% to 8.7% (0.15% each for employer and employee)
- Introduction of a patent box at cantonal level with a reduction of up to 90% for patents and similar rights
- A deduction of 150% of actual domestic research and development costs (staff costs and flat-rate allowances). This measures applies only for the canton
- Deduction for self-financing (interest deduction) for cantons with a tax burden of at least 13.5% (to date only the case for the Canton of Zurich)

- Maximum relief from new privileges capped at 70%

- Step up of added-value generated under the privileges (hidden reserves)

- Partial taxation of dividends from qualifying investments (> 10%) at private level set at a minimum of 50% for the canton (previously no limit) and 70% (previously 60%) for the Federation

- Restriction on the capital contribution principle for listed Swiss companies. Dividends from the capital contribution reserve (KER) may only be distributed in an amount equal to dividends from retained earnings.

- The cantonal portion of Federal tax rises from 17% to 21.2% (vertical equalization)

- Reduction on taxable equity in the amount of investments and patents

- Hidden reserves released when moving to Switzerland from abroad can be written off over 10 years

The STAF will intensify tax competition between the cantons. Most cantons are likely to set their tax rates at between 12% and 15%. Implementation work is currently under way at cantonal and Federal level. The practical implementation and treatment of the new privileges is likely to be considerably more challenging than for the "old" privileges.

5. Withholding tax reform to take effect from January 1, 2021

The amendments to the Taxation at Source Ordinance will take effect from January 1, 2021. The aim is to reduce the disparity of treatment between taxpayers taxed at source and those assessed normally by extending normal assessment in arrears (which previously only applied to income below CHF 120,000). Tariff corrections and additional normal assessment will be abolished. Withholding tax will be settled under the law of the canton of the place of residence (usual address, domicile of borrower and/or place of activity). Tax debtors (companies) may no longer settle solely with their source canton. The canton of the place of residence at the end of the tax period is responsible for ordinary assessment in arrears. Withholding tax levied previously during the tax period in other cantons will be transferred to the canton responsible. The person taxed at source has subsidiary liability with the tax debtor for the tax owed (e.g. in the event the latter goes bankrupt).

6. A1 certificate (freedom of movement between Switzerland and the EU)

An A1 certificate confirms that an employee has social security coverage in their country of residence. Anyone working outside their home country, even only temporarily, e.g. as a consultant or to take part in a workshop, ought to pay social security contributions abroad. An A1 certificate avoids double taxation. In other words, whenever engaged in cross-border activity abroad the employee in question must take an A1 certificate with them. Foreign authorities have stepped up checks considerably since the start of 2019. Some violations have resulted in substantial fines.

7. Tax traps with succession solutions

The sale of a company held by a natural person to a legal entity can have tax consequences for the seller. Indirect partial liquidation and transposition are governed in law. With indirect partial liquidation the assets acquired which are not needed for the business are distributed by the buyer and applied towards settling the purchase price. Transposition is where a natural person injects an equity investment into a company they control. The difference between the contribution value and the nominal value plus the capital

contribution reserve is subject to income tax. However, there are also cases which are neither transpositions not indirect partial liquidations but which result in tax consequences under the heading of tax avoidance. A recent decision of the Federal Supreme Court held that a succession solution was tax avoidance. Parents sold their privately held shares to the son's company by granting a loan. Shortly after the purchase the parents' loan was gifted to the son. As with transposition, the difference between the loan and the nominal value of the shares is deemed income for the son. So it is worth checking succession solutions to see if transactions which are neither a transposition nor an indirect partial liquidation might nevertheless come under the heading of tax avoidance.

8. In-house news

Congratulations

Jovana Ivljanin this summer very successfully passed her **Federal Diploma of Vocational Education and Training and High School Diploma.**

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