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NewsLetter

English

Value Solutions
Treuhand & Unternehmensberatung

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1. Revision to taxation at source

Various changes to taxation at source come into effect from January 1, 2021. The aim of the revision is to make taxation at source consistent across Switzerland and remove the inequality of treatment between people taxed at source and those taxed in the standard way.

From January 1, 2021 employers of people taxed at source must note that the settlement can no longer be submitted in the canton where the employer has its registered office, but has to take place with each canton that has a claim (i.e. in each canton where employees taxed at source are resident). Employees have to register with the appropriate tax authority in all relevant cantons and request a taxpayer ID number (SSL). These allow taxation at source to be notified using the payroll reporting procedure (ELM-QST). The cantons may only set the entitlement provision at between 1% and 2%; in the canton of Zug it has been just 1% since 2017.

The previous option of additional standard assessment has been discontinued. Anyone who has income or assets not subject to taxation at source now has to submit a mandatory retrospective standard assessment (NOV).

The gross annual income threshold of CHF 120,000 continues to apply for NOV. If an employee taxed at source reaches gross income of CHF 120,000 or more, they are required to complete a standard tax return. Tax withheld at source is deducted from the amount due in the standard process. NOV will always be used from the year in question onwards, even if gross annual income falls back below CHF 120,000.

2. Equal pay

The Gender Equality Act is being amended to require employers to analyze equal pay at their company from July 1, 2020. To be more precise, all employers with more than 100 employees (excluding apprentices) are obliged to carry out an internal analysis of equal pay by the end of June 2021 and arrange for it to be reviewed by an external examiner (the review must be completed by June 2022). The analysis must be repeated every four years if pay is found not be equal. Otherwise companies are under no obligation to carry out further analysis. Employers must inform their employees of the results of the analysis by 30 June 2023. The federal government is providing companies with a free analysis tool called logib, which is intended to carry out an equal pay analysis scientifically, anonymously and in compliance with the law. However, companies are free to use the analysis tool of their choice. Other tools, such as those from Abakaba (Abakaba.Check.E and Abakaba.Check.P), also satisfy the statutory requirements.

3. Registered company office and actual management – tax competition between the cantons picks up after TRAF

Since TRAF (tax reform and AHV financing) was approved, the differences in the tax burden between the different cantons have increased. Rates of taxation on profit before tax range from 12% to 21.6% (for federal, cantonal and municipal taxes). It therefore comes as no surprise that taxpayers are attempting to optimize their tax burden and move their companies to a canton where it is lower. Generally, companies are taxed at the location of the registered office specified in the articles of association. Tax authorities assume that a company is actually managed where the registered office is located. If the location of the registered office specified in the articles of association is not the same as where a company is actually managed, the inter-cantonal tax principles stipulate that it is taxed at the place of actual management. This is nothing new. There has been as sharp rise recently in the intensity with which “high-tax cantons” such as Zurich are hunting out “letter box companies” from outside the canton.

When assessing whether a company has a sufficiently substantial presence at the location of the registered office specified in the articles of association to be able to carry out its business activity, the following criteria are usually applied:

- Office premises at the registered office and outside the canton
- Personnel
- Internet presence
- Correspondence
- Contactability
- Place of residence of the directors and owners (if these are identical)
- Where are board meetings and the AGM held?
- Evidence that the structure is lived out in practice, from expense vouchers such as credit card bills, where cash withdrawals are made, gas purchases, public transport season tickets and telephone bills

Working from home may also become an increasingly significant part of the assessment in future.

Due attention must be paid to the issue of a substantial presence at the location of the registered office. Otherwise companies risk being taxed twice, in two cantons.

4. Employee participation

With start-ups in particular, employee participation provides an additional incentive for staff. Switzerland too is seeing an increasing trend towards granting a portion of compensation that is variable and based on company performance. The intention is that staff should also be able to share in the company's success, e.g. through employee shares, participation certificates (PCs) or options.

Forms of employee participation

The point of employee participation schemes is that the variable element of compensation, i.e. the bonus, is paid out to staff not in cash but in the form of equity instruments (e.g. employee shares, PCs, options or phantom stock).

This ties employees in to the company for the long term, despite the lower salaries and long working hours that are typical in a start-up environment. Staff profit from the success of the company and learn to think like entrepreneurs.

Employee shares

Despite the drawbacks, which mainly relate to tax, employee shares remain a common form of employee participation in Switzerland. They frequently involve a great deal of time and effort, as they require a (conditional) capital increase along with certification and entry in the commercial register, and staff own all their rights as shareholders straight from the start.

Employee options

To an extent, employee options solve the drawbacks just mentioned. Employees typically acquire a right to buy shares as a result of their performance at work. The terms on which shares may be bought are guaranteed in advance. Employees only actually become shareholders when the options are exercised.

Phantom stock

There is a growing move towards phantom stock. Employees participate in the success of the company on a virtual basis. Staff are granted phantom shares in the company, depending on their performance, and can cash them in if they rise in value. For the company, the advantage phantom stock has over employee participation through shares is that the ownership structure is unchanged and staff have no right to receive information or be involved in decisions. Setting programs up is also quick and easy.

Tax issues

Employee shares

With employee shares, the full difference between the market value of shares and the discounted issue price is subject to social security deductions and income tax when the shares are received/acquired. These tax consequences are often a major burden for employees, since the shares cannot be sold at once. However, any subsequent capital gain on sale is tax-free.

Employee options (unlisted company)

Employee options are taxed when shares are acquired, not when they themselves are issued. This has the advantage that options of unlisted companies can be issued tax-free. However, any gain on acquisition (i.e. positive difference between the market value of the shares and the purchase price the employee has to pay) is subject to income tax and social security deductions. Any further gain in the event of a subsequent sale is tax-free.

Phantom stock

Just like employee options, phantom stock is not taxed on issue. However, when a gain (the pecuniary benefit for the holder) is realized, this is subject to income tax and social security deductions.

Accounting treatment of options under IFRS, Swiss GAAP FER and the Swiss Code of Obligations

It is always advisable to value options using the Black-Scholes method (regardless of whether they are settled in cash or shares) and to spread the personnel expense over the vesting period. Where settlement is in cash (i.e. cash is paid when the option is exercised) a liability/provision is recognized and charged to personnel costs; where settlement is in shares a capital contribution reserve is recognized and likewise charged to personnel costs. Recognizing share-based options is voluntary (see below), depending on the accounting standard, but options settled in cash must be recognized and disclosed if the probability of exercise exceeds 50%. Recognizing options settled with shares is mandatory under IFRS, and they are measured only at the time of issue (no remeasurement). Generally, with unlisted companies Swiss GAAP FER requires only disclosure in the notes to the accounts for options settled with shares. However, if options are recognized the procedure is the same as with IFRS. The Swiss Code of Obligations provides a right to choose whether to recognize options settled with shares (or simply disclose them in the notes), and also whether to spread the personnel expense over the vesting period or recognize it in full either immediately upon issue or when the shares are actually acquired.

5. Valluga – our services in crisis situations

2020 is proving to be a turbulent year. Many firms have slipped into difficulties through no fault of their own and are now facing issues they have never had to deal with before.

Valluga provides the services needed in times of crisis. Whether it's distressed M&A, corporate finance services like liquidity planning or business planning, all the way to turnaround management and drawing up the corresponding restructuring plans.

Companies in a crisis have several options. If keeping the business going is not possible, the possibilities are the following:

- Winding up (gradual liquidation) – provided financing is available
- Composition with assignment of assets – with the possibility of setting up a hive-off company
- Bankruptcy

If the business can be kept going, the options are these:

- Turnaround - provided the business is viable and there is a realistic turnaround plan
- Distressed M&A - if a turnaround is not possible or desired

- Composition with percentage settlement – rarely encountered in practice

A combination of the options listed may be possible, depending on the situation. Time is a key factor. Making good use of it is essential to restoring or realizing value. If it is possible to plausibly demonstrate that appropriate action will allow a return on capital in line with the market to be achieved, major stakeholders will support a plan.

www.valluga.ch

In-house news

Congratulations

Stefan Koller has become Partner of the Value Solutions Group.

New Team Members

Daniela Hürlimann, Trust Administrator: Entry as of 01 August 2020

Adelina Berisha, Fiduciary with Swiss Examination: Entry as of 01 October 2020

Fabienne Anderegg, Expert in finance and accounting with Swiss Examination: Entry as of 01 October 2020

Remo Conti, Working Student: Entry as of 01 November 2020


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Total range of services

Tax consultancy

We take a holistic approach to tax planning, assist you in your tax planning and represent your interests with the authorities.

– Advice on all tax matters relating to company formations, conversions, mergers, divisions, renovations, liquidations, registered address relocation and succession planning
– Fiscal advice for company acquisitions and sales, joint ventures and MBOs/MBIs
– Annual statement assistance for tax purposes, preparation of tax returns and representing your interests with the tax authorities

Trust services & management consulting

Let us handle all business, taxation and legal financial and business issues for you.

– Development of efficient accounting solutions and implementation on your premises or at our offices
– Timely monitoring of finances and situation-specific information
– Support with recurring tasks such as VAT returns, payroll administration and insurance issues
– Advice on all corporate finance matters such as M & A services, transactions, private placements, financing, etc.

Auditing

We advise and assist you in controlling and monitoring your company. We develop solutions to enable you to react to any changes in the economic and regulatory environment in time.

– Examination of financial statements, prepared in accordance with national or international accounting standards
– Examination of pension funds, public corporations or revisions in terms of the Money Laundering Act
– Audit of the internal control system and the acceptance of internal audit assignments

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