Corporate Tax Reform III in Switzerland – GGI ITPG Meeting

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1. Actual Situation – Tax privileges (1)

Holding companies (cantonal tax privilege)

Corporate entities whose purpose and principal function comprises the long-term administration of participations, and which do not exercise any business activities in Switzerland.

Taxation:

- all kind of income is exempt from the cantonal taxes
- the Federal tax is due on all kind of income at the ordinary tax rate of 8.5% (with participation deduction)
- reduced capital tax

Holding company test:

- at least two thirds of its assets consist of financial participations in subsidiaries (min. 10%), or
- at least two thirds of its total earnings derive from such participations.

1. Actual Situation – Tax privileges (2)

Administrative companies (cantonal tax privilege)

Corporate entities which perform an administrative function, but no business activity in Switzerland and which moreover do not have any employees, nor own offices in Switzerland.

Taxation:

- income from participations is exempt from the cantonal taxes
- 0% - 30% of non-domestic income is taxed at ordinary cantonal rates (according to the specific cantonal tax law)
- other income derived from Switzerland is subject to ordinary cantonal taxation
- the Federal tax is due on all kind of income at the ordinary tax rate of 8.5% (with participation deduction)
- Reduced capital tax applies.

1. Actual Situation – Tax privileges (3)

Mixed companies (cantonal tax privilege)

Corporate entities whose business activities have a largely non-domestic focus and which do not exercise a substantial business activity in Switzerland.

Taxation:

- 1% - 30% of non-domestic income is taxed at ordinary cantonal rates (according to the specific cantonal tax law)
- other income derived from Switzerland is subject to ordinary cantonal taxation
- the Federal tax is due on all kind of income at the ordinary tax rate of 8.5% (with participation deduction)
- reduced capital tax applies.

Mixed company test:

- At least 80 % of gross earnings must derive from non-domestic sources, **and**
- At least 80 % of expenses must be incurred abroad.

1. Actual Situation – Tax privileges (4)

Principal companies (federal tax privilege)

Main companies of a group, whose functions, responsibilities and risks (purchase of goods, planning of R&D, planning and management of the production, marketing and sales, treasury and finance, administration etc.). are centralised in the principal company

Assumption that the principal company has representative's PE's according to art. 5 (5) OECD model convention

Taxation (federal tax):

- 50% of the income from trading business is tax free (deemed to be taxed outside of Switzerland)
- 70% of the total income is deemed being income from trading business

1. Actual Situation – Tax privileges (5)

Finance branche (federal tax privilege)
Notional interest deduction on deemed borrowing capital

Taxation (federal tax):
- 90% of the total of the balance sheet are deemed to be borrowing capital (with interest deduction)

Finance branche test:
- Assets of at least CHF 100 mio.
- At least 75% financial income and financial assets

2. Dispute with EU / OECD

EU

	OECD gray listing
	several measures taken, e.g. Black listing in Italy
14.10.2014	Joint statement Switzerland intends to take measures to remove the following five tax regimes: the cantonal administrative company status, the cantonal mixed company status, the cantonal holding company status, circular Number 8 of the Federal Tax Administration on principal structures and the current practice of the Federal Tax Administration regarding finance branches. Any possible replacement measures will need to be in line with generally accepted international standards (OECD)

3. CTR III / Overview on measures proposed

Corporate tax measures

- License box
- Notional interest deduction
- Reduction of the cantonal corporate income tax rates (at about 11 – 15%)
- Abolition of the corporate wealth tax for holding companies
- Abolition of the stamp tax on the creation of equity (of actual 0.1 percent)
- Adjustments in the deduction of losses carried forward (cancellation of the 7-years limitation / taxation of at least 20% of the taxable income)
- Adjustments in the participation deduction (change to a direct exemption method / cancellation of the participation threshold)

Compensation measures

- Introduction of a capital gains tax on securities
- Increase of the taxation on dividend payments (privilege of max. 30%, but abolition of the participation threshold)

4. CTR III / Corporate tax measures

License box (relying on UK patent box)

Taxation (Cantonal tax):

- Max. 80% of the profit from qualifying patents tax free

Mechanism

- Residual method
- Step-by-step procedure to determine the privileged income
- Without routine functions and marketing income

4. CTR III / Corporate tax measures

License box (relying on UK patent box)

Preconditions

- Legal person (corporations…)
- Qualifying IPs:
  a) patents
  b) supplementary protection certificates
  c) exclusive license on a patent
  d) first notifyer protection acc. to Federal Medicines Law
- Substance required:
  a) significant contribution to the development or enhancement
  b) Group of companies: control on the development /
  c) in case of usufructary right or license: belonging to the group of companies

- But: OECD / EU developments must be followed closely!
  e.g. UK/German proposal on modified nexus approach

4. CTR III / Corporate tax measures

License box

EU nexus approach

$$\frac{\text{Qualifying expenditures incurred to develop IP asset}}{\text{Overall expenditures incurred to develop IP asset}} \times \text{Overall income from IP asset}$$

= income receiving tax benefits

UK / German proposal (11.11.2014) on modified nexus approach:

Raise of qualifying and overall expenditures by max. 30%, if expenditures have occurred within a group of companies

OECD Forum on Harmful Tax Practise should determine a proposal until June 2015

4. CTR III / Corporate tax measures

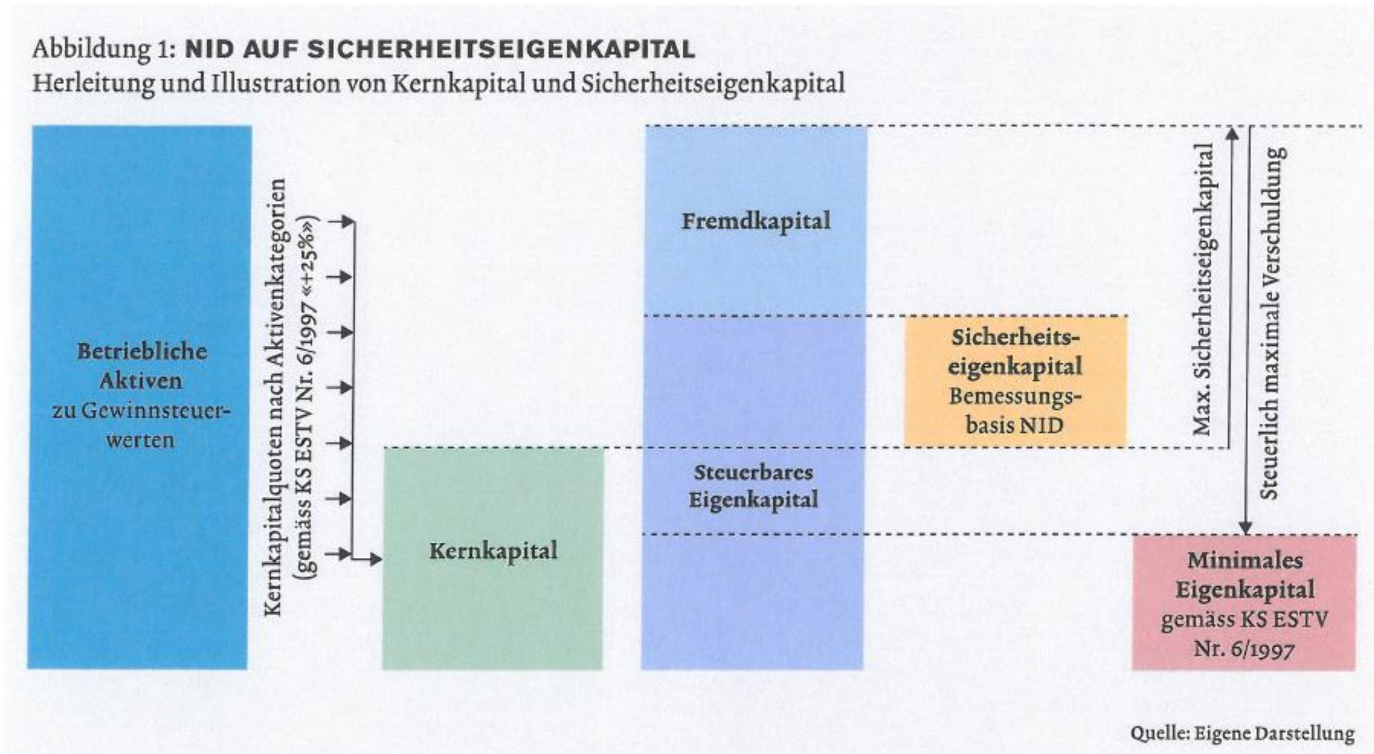
Notional interest deduction

Taxation (Cantonal tax and Federal tax):

- Calculatory interest deduction on “core equity” based on the model of Belgium and Liechtenstein
- Interest rate: return on 10-years Federal bonds plus 0,5 percent

4. CTR III / Corporate tax measures

Notional interest deduction



Source: Staubli / Küttel, ST 6-7/14, S.573

5. Corporate tax reform III / Timetable

19.09.2014	Law proposal from the Federal Council
31.01.2015	End of consultation with the political parties, cantonal governments and associations of interests
2015	Federal council’s despatch to the parliament (but not before the publication of the relevant BEPS reports)
2015-2016	Parliamentary debate
2017-2020	Entry into force

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