GENEVA BASED TAX LAW FIRM

BOITELLE TAX

2023

Year-end Swiss Tax Update

HAPPY HOLIDAYS FROM BOITELLE TAX

Dear Clients, Friends of the Firm, Esteemed Readers,

Raise a glass to 2023 – a vintage year for tax developments! It's been a bustling period with a rich bouquet of legislative proposals and directives, both in the realm of Swiss taxation and on the global stage.

Our latest newsletter is like a finely aged wine, a curated selection of the most impactful updates that have flavored our practice this year. We've decanted the essential information, ensuring you savor every note that resonates with your fiscal interests.

As we toast to the knowledge shared and the insights gained, we bid you joyful reading and look forward to another round of enlightening exchanges in the upcoming year.

Wishing you sparkling festivities and a prosperous New Year!

Cheers,

The Boitelle Tax Team 🥂 📜

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SWISS TAX UPDATES INDIVIDUALS

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Upcoming family taxation reform

Fed up of being penalized for saying « I do « ? The Swiss Federal Council gets you!

On 30 August 2023, the Swiss Federal Council laid the groundwork for a significant shift in taxation with the introduction of Individual Taxation. The proposed system, slated for parliamentary review in March 2024, **is not expected to be implemented before 2026.**

Current Swiss tax system's impact on married couples

Under the existing Swiss tax regime, married couples and registered partners face joint taxation (while unmarried couples are taxed separately). This system, which combines incomes for tax purposes, often results in higher tax liabilities under progressive rates. It not only challenges the constitutional principle of equal treatment but also penalizes dual-income families, particularly those with children, while inadvertently discouraging female employment and marriage**.**

Efforts to mitigate these issues, such as the "splitting" mechanism in Geneva, specific deductions for married couples, tax caps, and adjusted tax scales in some cantons, have been insufficient in resolving the inherent inequalities.

Proposal for individual taxation of married couples

The proposed reform introduces individual taxation for all taxpayers, irrespective of marital status to abolish tax discrimination between married and unmarried couples. Key features include:

- Separate tax declarations for married couples at both federal/cantonal/communal levels, aligning them with cohabiting couples and singles.
- Enhanced child deductions, with a federal increase from CHF 6,600 to CHF 12,000 per child.
- Adjusted tax rates to lower burdens for low and medium incomes while slightly increasing rates for very high incomes.

Points for consideration

The reform may increase the tax burden for traditionally structured families (single-income households). How about a 'choose-your-own-tax-adventure' style system, where couples can decide on joint or individual taxation (similar to systems in Spain and Germany) ?

2 Divorce taxation

1. Introduction of an equal treatment between separated or divorced parents in Geneva

On September 1, 2023, the Geneva Parliament passed a law to **establish equal treatment between separated or divorced parents** in tax matters.

<u>Current tax system:</u> when parents who are separated or divorced contribute equally to the maintenance and care of their child, without paying child support, only one parent is eligible for the full tax reduction (complete splitting at a divisor rate of 2), which is equivalent to the tax relief granted to married couples. Typically, this reduced tax rate benefits the parent with lower income.

This situation not only represents a fiscal injustice between separated or divorced parents but also creates challenges in tax predictability, as a change in income could shift the allocation of the reduced rate between the parents.

Effective from January 1, 2024, **divorced parents who financially support their children will be treated equally in terms of taxation**: each will be eligible for an identical reduction in the tax rate (partial splitting at a divisor rate of 1.8).

2. Tax Implications of Alimony in Separation or Divorce

In shared custody situations, if a parent pays child maintenance, can they access reduced tax rates for married individuals and half of the social deductions? The Federal Court in ruling 9C_652/2022 delineated that **equal division of social deductions only applies when both parents contribute equally to child support without any alimony payments.**

When alimony is paid by one parent, it's already tax-deductible. Allowing for a social deduction in addition would result in a double deduction, which is not permissible.

Furthermore, the custodial parent receiving alimony qualifies for the reduced tax rate, as they are fiscally recognized as the sole supporter of the child.

Alimony issues are complex, both domestically and internationally. Indeed, tax treatment differs according to the countries involved. For instance, in Switzerland, alimony is deductible by the payer and taxed in the hands of the recipient, while in the UK for example, it is tax-neutral. This discrepancy can lead to indirect double taxation, which tax treaties do not currently address, often disadvantaging the taxpayer.

3 Geneva proposal for the reduction of the wealth tax on work tools

An effective measure to boost cantonal appeal?

Switzerland, alongside Norway, Spain, and France (now limited to real estate only), remains one of the few OECD countries to uphold a wealth tax. Predating income tax, its widespread application has long fueled political debate. For instance, in Geneva, a proposal to raise wealth tax by 1.5% for wealth over CHF 3 million was overwhelmingly rejected by a popular vote in June 2023.

Cantonal Disparities and Competitive Challenges

Wealth tax rates vary significantly across Swiss cantons. Higher rates in canton like Geneva, Vaud, Valais, and Basel-Stadt (up to 1.03%) contrast with much lower rates in Nidwald, Zug, Obwald, and Schwyz (below 0.25%). Despite efforts like Geneva's tax shield, which caps the total tax liability at 60% of taxable income, maintaining competitive edges is challenging.

Entrepreneurs in French-speaking cantons bear the brunt of this tax, particularly on work tools, i.e., their businesses. The valuation for tax purposes, following Swiss Tax Conference guidelines, often surpasses the net book value, resulting in taxation on unavailable value. This can deter entrepreneurs from setting up businesses in these cantons.

Geneva Proposal

The Geneva's 2023 newly elected government proposed a law on June 28, 2023 to reduce the tax burden on work tools. The proposal outlines a 60% wealth tax reduction for entrepreneurs who are Geneva residents, own a significant stake in their non-listed company (at least 10%), and are actively involved in the company's operations. The Grand Conseil (General Parliament)'s decision is pending, with no date yet fixed for discussion.

As a reminder, in 2022, Vaud already implemented a valuation method aiming at reduce the wealth tax for non-listed company shares held by major, active shareholders, allowing for preferential valuation under certain conditions.

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Updates on telework income for border workers

1. Switzerland and France - Amendments to the DTA signed on June 27, 2023 (Federal Council message adopted on November 22, 2023)

Key provision

- **40% Telework Threshold:** employees can work from home for up to 40% of their annual hours without impacting the employer's state tax rights. Financial compensation to the employee's residence state is set at 4.5% for Geneva-based employers.

- **Automatic exchange of information (AEOI) :** a new provision introduces AEOI of wage data for border teleworkers. This covers employee's identity, tax year, telework days and total remuneration.

- Cross-border commuters are restricted to 10 business travel days per year in their state of residence / third states, without affecting their tax situation.

If the 40% telework threshold is exceeded, France can tax all telework days within its borders. In such case, CH employers must deduct French tax at source, requiring special authorization to align with Swiss law (Article 271, Swiss Penal Code).

2. Switzerland and Italy – agreement on tax treatment for home working signed on 10 November 2023

Key provision

- **25% Telework Threshold:** from 1st January 2024, cross-border commuters can telework up to 25% of their annual hours without affecting the employer's state tax rights. In return, 40% of the revenues will be compensated to the commuters' home municipalities.

- **Definition of 'Cross-border Commuter':** The agreement refers to the definition established in the December 23, 2020, agreement, which came into force on July 17, 2023.

3. New agreement on social security for telework

As of July 1, 2023, a new European agreement, endorsed by Switzerland and France, permits cross-border telework for up to 49.99% with social security remaining in the employer's state. Regrettably, the CH-FR new tax agreement has not been adjusted to match this threshold. Italy, not a signatory yet, permits teleworking up to 25%, in line with fiscal constraints, without social security implications.

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Real estate tax– latest news

1. Geneva real estate capital gains

Swiss property owners face capital gains tax on the sale of real estate. This includes shares of real estate companies owning a Swiss property, which must be declared.

In Geneva, the taxation of the real estate capital gan is proportional, with a degressive rate based on holding period.

On 18 June 2023, Swiss people approved the law on fiscal valuations of certain properties (“LEFI”), raising the capital gains tax from 0% to 2% for properties held over 25 years.

However, due to legal challenges, the enactment scheduled for January 1, 2024, is delayed to no earlier than 2025.

2. French SCI Taxation - Geneva Practice Change Post Federal Tribunal Decision 2C_365/2021

The Swiss Federal Court confirmed the Vaud tax administration’s practice of **treating shares of French SCIs as securities** for wealth tax purpose. As a consequence, according to Swiss domestic law, such asset is subject to Swiss wealth tax when it is held by Swiss residents, despite the CH-FR DTA.

Indeed, as per the subject to tax clause provided by the CH-FR DTA, Switzerland is entitled to tax these shares if not taxed in France, which is typically the case when their value is below the EUR 1.3 million threshold.

Following this decision, the Geneva tax administration, which previously recognized shares of French SCI (taxed as transparent in France) as real estate, now acknowledges these shares as securities. Thus, a Geneva tax resident holding such shares must declare these shares for wealth tax purposes as securities (if untaxed in France), while the same asset must be declared as real estate for income tax purpose.

Practical Challenges

- **SCI Share Valuation:** How to value without if the French SCI has no detailed financial statements - acquisition price or market value?
- **Passive Interests:** How this new practice will affect the allocation of gross assets?
- **SCI Liquidation / sale of SCI shares :** Should capital gains be taxed as property income or dividends? In our opinion, it should be taxed transparently as property income (considered only for rate determination in Switzerland, as a foreign property).

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New Housing Taxation System?

Saying goodbye to taxing hypothetical tenants?

On 12 June 2023, the Swiss National Council took a decisive step towards tax reform by voting in favor of abolishing the imputed rental value taxation.

Current system: rental value taxation

In Switzerland, homeowners are taxed on a theoretical income, known as the imputed rental value, when their property is not rented out. This tax is based on the principle that homeownership increases consumption capacity, constituting indirect income.
The rental value is determined differently across cantons, considering factors like property size, type, and location. Homeowners currently offset this tax by deducting mortgage interests and costs related to maintenance and insurance.

Key criticisms

The system has been a recurrent topic of contention, criticized namely for incentivizing debt over mortgage repayment. International organizations like the IMF and OECD have expressed concerns about the high levels of private household debt in Switzerland.

Proposed amendments

- Abolition of rental value taxation for both primary and secondary residences.
- Limiting the deductibility of passive interests to 40% of the taxable income from wealth.
- Eliminating deductions for maintenance costs.

Challenges and legislative journey

- **Council of States (Senate) Review:** Disagreements evident, particularly regarding secondary residences tax and a preferred 70% cap on private passive interest deductions.
- **Maintenance Deductions:** Criticism for potentially discouraging upkeep of properties and conflicting with wealth maintenance deduction principles.
- **Impact on Homeowners:** Concerns about potentially unfair impacts on younger, active homeowners compared to older homeowners, especially retirees who have largely paid off their mortgages.

The proposal needs the approval of the Council of States and should then pass a referendum (optional). If passed, the new regulations could come into effect no earlier than January 1, 2025.

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Other Swiss tax news for individuals

1. Swiss Lump-Sum Taxation Remains Attractive

While European regimes like Portugal's non-habitual tax resident status (set to be abolished in 2024) and the UK's non-dom tax status (under potential repeal by the Labour Party) are phasing out, **Switzerland's lump-sum taxation continues to draw HNWIs.** The Swiss system is particularly appealing for its economic and political stability compared to its competitors.

In recent years, Switzerland has welcomed a significant influx of Norwegian HNWIs, driven away by increasing wealth taxes in their homeland. Until now, Norway did not recognize the status of residents for lump-sum taxpayers under Article 4-4 of the (DTA). However, on **June 30, 2023** official press release from the Norwegian Ministry of Finance finally **acknowledged the residency status under the DTA for Norwegian individuals taxed under the Swiss modified lump-sum tax regime.** This recognition is expected to continue attracting Norwegian nationals to Switzerland.

On a side note, a recent ruling from the French Supreme Court on September 18, 2023, which reminded that Swiss taxpayers under lump-sum taxation (even increased) could not benefit from the CH-FR DTA if they are expressly excluded. Therefore, vigilance is advised for individuals coming from France who wish to settle in Switzerland under the lump-sum tax regime,

2. FTA's Tax Guidance on Crypto-Assets 19 October 2023

NFTs Taxation Updates by the Swiss FTA

- The document provides with an overview of NFT functions, encompassing various assets like digital art, collectibles, and gaming assets.
- Given their diverse nature, the tax treatment of NFTs must be evaluated on a case-by-case basis for income tax.
- Royalties to creators taxable as income from intangible assets.
- No guidance yet on wealth tax valuation for NFTs.

Airdrop Taxation Updates by the Swiss FTA

- Explanation of airdrop mechanisms and types.
- Airdrops in Switzerland generally taxable, classified variably (as yield, wage, etc.).
- Commercially motivated airdrops are not donations; issuance costs deductible for organizers.
- Some airdrops may be tax-free lotteries if they meet certain criteria and are below CHF 1’000.

NFTs and airdrops are not subject to withholding tax, with specific exceptions (e.g., airdrops as lottery winnings beyond CHF 1’000, hidden dividend distributions).

Swiss Tax Updates Corporate

8 Some Swiss updates for corporates

What's in the box ?

- ❑ **VAT adjustments effective from January 1, 2024**

- **Standard VAT rate** will be adjusted from 7.7% to 8.1%.
- **Reduced VAT rate** is set to increase from 2.5% to 2.6%.
- **Special rate for accommodation services** will rise from 3.7% to 3.8%.

- ❑ The **Geneva Municipal Business Tax is abolished as of January 1, 2024**. To compensate, the corporate profit tax rate will be revised upwards from 14% to 14.7% (effective rates incl. federal tax). This move addresses the previous criticisms for not adequately reflecting businesses' actual financial burdens and aligns with the constitutional principle of tax capacity. For the fiscal years prior to 2024, it is believed that the tax could be challenged in cases of undue hardship.

- ❑ **Extension of loss carryforward period from 7 to 10 years, with retroactive effect from 2020.** This change is anticipated to be in place by January 1, 2026, in accordance with Parliament's Motion 21.3001.

- ❑ A notable Swiss Federal Court ruling (ATF 05.06.2023, 9C_678/2022) states that **a significant discount granted by a Swiss company to its foreign sister company is regarded as a hidden dividend if not commercially justified**.

Thus, even when "cost plus" ruling terms are met, the benefit must be integrated into the Swiss company's profits, especially if it represents a substantial part of billed commissions. This could indicate concealed profit distribution, requiring the company to demonstrate that such discounts align with normal commercial practices.

The ruling underscores the importance of cooperation, particularly when the beneficiary is based abroad in a non-double taxation treaty jurisdiction, thereby limiting the Swiss tax authority's investigative capabilities.

It also reminds companies that a cantonal tax authority's failure to identify concealed profit distribution does not absolve them from federal withholding tax obligations. The Federal Tax Administration may independently identify a taxable profit, prompting tax reassessment.

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Pillar 2 implementation in Switzerland

"Pioneers take the arrows, settlers take the land"

The Swiss Federal Council took proactive measures to meet the OECD's timeline for instituting a 15% global minimum tax on multinationals with annual revenues exceeding EUR 750 million, aiming for implementation in 2024.

In response to tight deadlines, the Council successfully advocated for a temporary constitutional provision, which received a stunning 80% approval in a popular vote on June 18, 2023. This provision empowers the creation of a Federal ordinance to manage minimum taxation temporarily.

Although the tax regime under this second pillar primarily adheres to OECD standards, specific implementing measures for the January 1, 2024 deadline are yet to be detailed. It is anticipated that the adjusted tax rate will be enacted under IFRS and US GAAP.

Globally, many OECD countries have not yet planned to introduce the minimum tax by the stipulated date. Influential groups, including the Swiss Senate's Economic Affairs and Taxation Committee, have proposed postponing its introduction by at least a year. At the time of writing, there is still uncertainty about the ordinance's activation by January 1, 2024.
The decision will be announced on Friday, December 22, 2023.

Compensatory measures to retain attractiveness

- Most Swiss cantons are currently below the 15% threshold due to the 2020 RFFA reform which lowered corporate tax rates.

- Attracting large multinational corporations through extended tax relief becomes more challenging under the OECD's tax reform.

- Additional revenues derived from the Pillar-2 reform will be allocated with 75% going to the cantons and 25% to the Confederation. Cantons are currently contemplating supportive measures to maintain and enhance economic attractiveness.

- Proposals are being tabled to provide direct aid to international schools, foster corporate R&D investment, and support companies' environmental endeavors. These are potential strategies to maintain and boost the local economy's competitiveness and desirability.

SWISS TAX TRANSPARENCY

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Introduction of a (non-public) UBO register ?

Can Switzerland Continue Without a Central UBO Registry?

On August 30, 2023, the Swiss Federal Council launched a **consultation on a draft law designed to increase the transparency of legal entities in Switzerland by clearly identifying their ultimate beneficial owners (UBOs).** This initiative is in line with Switzerland's commitment to combat money laundering and to align with the Financial Action Task Force (FATF) evaluation expected in 2027/2028.

Current Regulations

Since 2014, Swiss corporate law requires entities to disclose UBOs owning more than 25% of the company's shares or voting rights. Since November 1, 2019, deliberate violations of this disclosure requirement are subject to financial penalties. However, the lack of a centralized registry hampers the government's ability to ensure full compliance.

Proposed Amendments

- **UBO Register:** establishment of a non-public UBO registry. This registry would be available to specific authorities and financial entities, striking a balance between meeting international standards and protecting individual privacy.

- **Legal Profession Diligence:** due diligence requirements for legal professionals engaged in activities with high-risk money laundering activities, with provisions to protect professional confidentiality.

- **Additional Measures:** Further steps to bolster the integrity and competitiveness of the Swiss financial and economic sector, particularly in real estate market.

Next Steps: The consultation period for this draft law has concluded on November 29, 2023. The Federal Council intends to present the finalized draft to Parliament in 2024. If passed, the implementation of the law would likely not take effect before January 1, 2026.

11 Global Initiative for the extension of the AEOI to the crypto-assets

Achieving transparency with respect to crypto asset transactions

In a significant development on November 10, 2023, 48 countries, including Switzerland, have jointly committed to adopt the Crypto-Asset Reporting Framework (CARF) developed by the OECD.

Objective: the aim of this agreement is to ensure full transparency of crypto-asset transactions. This will be achieved through a systematic exchange of information among the tax jurisdictions of the involved countries. Importantly, the scope of this framework extends beyond cryptocurrencies, encompassing all virtual assets such as NFTs, stablecoins, and derivatives.

All providers of crypto asset services will thus be subject to reporting obligations. Under the definition provided by the CARF, a crypto asset service provider is any entity that professionally conducts transactions in Crypto-Assets or operates a platform facilitating such transactions for customers, including both crypto asset exchanges and wallet providers.

Among the **committed countries** are most EU members and the United States, (which have not yet joined the Common Reporting Standard). Also involved are regions known for their financial services, such as the British Overseas Territories, the Cayman Islands, and Gibraltar. However, we note the absence of some key players in the cryptocurrency sector, such as China, Hong Kong, and the United Arab Emirates.

Implementation: Signatory countries aim to incorporate the CARF into national law, targeting information exchanges to begin by 2027, subject to national legislative processes. In Switzerland, the implementation project is slated for consultation in mid-2024, aiming for enactment by January 1, 2026.

This initiative was discussed in greater detail during the 16th Plenary Meeting of the Global Forum in Lisbon, held from November 29 to December 1, 2023. Following these discussions, a new group was formed to advance the work on the crypto-asset reporting framework. Notably, five more states, including Mauritius, Indonesia, and Monaco, have joined this declaration.

CONTACT US

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