To:	Clients and friends of the firm
From:	Thierry Boitelle / Aliasghar Kanani, BONNARD LAWSON
Date:	19 May 2019
Subject:	**2020 Swiss federal and Geneva cantonal corporate tax reform accepted!**

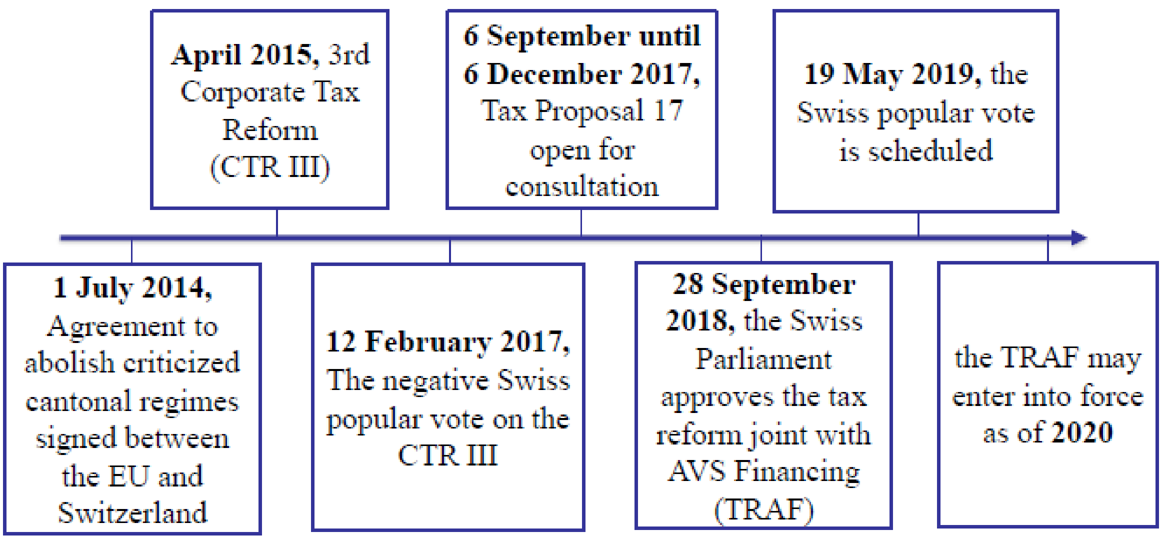
Dear clients and friends of the Firm,

We are very happy to report that today, 19 May 2019, the Swiss and Geneva voters by a large majority accepted the 2020 Swiss federal and Geneva cantonal corporate tax reforms. As we will explain in detail below, this very positive result from today's referendums means that as of 2020, Switzerland will on the one hand abolish its criticized (mainly) cantonal special tax regimes and on the other hand introduce generally applicable reduced and attractive corporate income tax rates in addition to which some new special regimes are introduced, while meeting the latest international standards and requirements.

We're very much back in business and look forward to assisting you with your existing or new Swiss corporate ventures!

1. Changes to the Swiss and Geneva corporate tax systems as per 2020

Timeline



In response to international criticism and strong pressure from the EU and the OECD, **the Federal Act on Tax Reform and AHV Financing (TRAF) abolishes as per 31 December 2019 the current corporate tax privileges for (i) base, auxiliary, domicile or mixed companies, (ii) holding companies, (iii) finance branches and (iv) principal companies.**

At the Swiss federal level, on 14 June 2016, the Swiss Parliament accepted the law on the previous so-called 3rd Corporate Tax Reform (CTR III). However, the Swiss people rejected it by popular vote (referendum) in February 2017.

After the rejection of CTR III, it was largely undisputed that a new tax reform law proposal should be brought into balance with social equality. The Swiss Federal Council originally intended to achieve this by increasing family allowances. Since this measure would not have benefited the entire population by any stretch, Parliament decided in favour of linking corporate tax reform with supplementary financing for AHV, i.e. the first pillar of Old Age Pension Insurance and TRAF was born.

In the spring of 2018, the TRAF law proposal was introduced in Parliament. The bill was adopted by Parliament in the final vote on 28 September 2018. Today, the Swiss voters accepted TRAF by a large two-third majority and the reform can now enter into force on 1 January 2020.

At the Geneva cantonal level, on 17 October 2018, the Geneva State Council adopted the cantonal draft law for the implementation of the TRAF. On 11 December 2018, the Geneva Parliament's tax commission approved the draft law for the cantonal implementation of TRAF, which has now been accepted by the Geneva voters on 19 May 2019.

As a result, the TRAF corporate tax reform introduces the following measures as per 2020:

a. **TRAF abolishes** as per 31 December 2019 the current **corporate tax privileges** for (i) base, auxiliary, domicile or mixed companies, (ii) holding companies, (iii) finance branches and (iv) principal companies. In this context, please note that the Swiss Federal Tax Administration (FTA) no longer apply the practices of principal companies and Swiss Finance Branches to new companies **since 2019**.

b. **Reduction of the effective corporate income tax rates -** The cantons have the option to reduce the effective cantonal corporate income tax rate. Each canton should decide which rate should be applicable.

   As of 2020, the **canton of Geneva** provides for an effective general cantonal corporate income tax rate of **13.99%** (with an absolute minimum of 13.48%).

   The **canton of Vaud** already reduced its corporate income tax rate from 23.5% (Lausanne) to **13.79% since 2019** (and approved by popular vote on 20 March 2016 with an astonishing majority of 87%).

c. **Reduction of capital tax for companies** – the TRAF allows cantons to introduce reduced capital tax rates for qualifying participations, patent box assets and intra-group loans. Cantons were already allowed to credit the corporate income tax against the capital tax.

As per 2020 the canton of Geneva introduces (i) a special reduced capital rate of 0.0012% for the above-mentioned qualifying assets and (ii) a progressive credit of corporate income tax against capital tax. As of the tax year 2024, 100% of the corporate income tax may be credited against the capital tax. In other words, in case of sufficient profits, no capital tax will be due anymore.

Today, the canton of Vaud already provides for a full credit of corporate income tax against capital tax.

d. **Patent box –** as per 1 January 2020 a patent box is introduced **at the cantonal tax level** providing for privileged taxation of income from patents and similar IP rights. The tax privilege consists of **an exemption from cantonal tax of up to 90% of qualifying IP income**. The cantons are free to apply a lower exemption. The **OECD's nexus approach for IP regimes** will be applied in the sense that IP income is only qualifying to the extent that the taxpayer demonstrates the income results from R&D expenses incurred by it. This means that income derived e.g. from acquired IP will not qualify for the patent box exemption. Individual enterprises (independents) will also be able to benefit from the new Swiss patent box regime.

The canton of Geneva also introduces the new OECD compliant restricted Patent Box, but the Geneva Reform provides that qualifying income from patents would benefit only from a reduction of up to 10%.

e. **Research & development (R&D) incentives at the cantonal tax level -** With the aim to promote Swiss based research & development activities, the cantons are given the possibility to apply **a special super-deduction for Swiss research and developments expenses up to maximum 150%.** The cantons are free to enact these new R&D tax incentives as per 1 January 2020 or not, but if they do, such incentives will also apply to individual enterprises (independents).

As per 1 January 2020, the canton of Geneva introduces a super-deduction of 150% (i.e. the allowed maximum) for Swiss R&D expenses.

f. **Notional interest deductions** – As of 2020, TRAF allows cantons to introduce notional interest deductions (NID) provided the effective overall corporate income tax rate in the capital city of the canton is at least 18.03%. Based on current legislation and law proposals, this will only be the case in the canton of Zurich (which aims for an effective rate of 18.2%) and this special provision is therefore also referred to as a "Lex Zurich".

g. **Step-up and tax treatment of hidden reserves, both at the federal and the cantonal tax levels - Hidden reserves and goodwill** which have been created when a company was still abroad or which relates to the relocation of assets or functions into Switzerland, **can be capitalized (stepped-up) in the tax balance sheet** without immediate taxation. Similarly, such hidden reserves and goodwill will be taxed immediately if the company, assets or functions leave Switzerland or will otherwise no longer be subject to Swiss tax (e.g. in the case of liquidation).

For newly arriving companies, the step-up remains tax-free and the hidden reserves can subsequently be amortized in the following years (e.g. goodwill depreciation over 10 years), resulting in substantial tax reductions.

For existing Swiss resident companies currently enjoying a cantonal tax privilege, the hidden reserves must be determined by way of a special assessment by the cantonal tax authorities at the moment of entry into force of TRAF, i.e. as per 1 January 2020. Such hidden reserves must then be separately taxed (at reduced rates) if and to the extent they are realized **within a 5-year transitory period** following the entry into force of TRAF, i.e. up to and including the tax year 2024.

The Geneva Reform provides for a special reduced rate of 13% applicable for the above-mentioned hidden reserves.

h. **Increase in of dividend taxation for individual substantial** shareholders (10% or more): Direct federal tax: 70% tax base - Cantonal level: minimum 50% tax base (as a financing and compensation measure)

The Geneva 2020 Reform provides for a base of 70% (private assets) and 60% (business assets).

i. AHV supplementary financing of around CHF 2 billion. CHF 1.2 billion due to the increase in salary contributions (0.3 percentage points) and CHF 0.8 billion due to the increase in the federal AHV contribution and waiver of the Confederation’s share of the percentage point of VAT earmarked for demographic change.

j. **Transposition adjustments**: anti-abuse provisions in the law treat a Transposition as a taxable private capital gain by exception (as private capital gains are normally exempt from tax in Switzerland). Transposition occurs when an individual sells participation rights to a company in which he or she holds a controlling stake of at least 50% ("sale to oneself"). The current statutory regulations provide for a "de minimis limit", i.e. they apply only when at seller transfers at least 5%. Apparently major Transpositions occurred with transfers below the 5% threshold, which Parliament perceived as a tax abuse and therefore this threshold is now abolished by TRAF, with the consequence that as of 2020 any "sale to oneself" will lead to capital gains taxation.

k. **Adjustments to the capital contribution principle**: As of 2020, Swiss listed companies must also distribute a one-franc (taxable) dividend for each franc must distributed (free of tax) from the capital contribution reserves. This will result in additional receipts for the Confederation, cantons and communes. In Parliament, these additional receipts were estimated at CHF 150 million. Certain exceptions apply to restructurings and to foreign companies moving to Switzerland.

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2. Conclusion

We are relieved that today marks the end of an almost 14-year tax dispute between Switzerland and the EU. Furthermore, we are very happy, especially after the previous setbacks, that the Swiss population now carried the 2020 corporate tax reform with a large two-third majority. We are excited that as of 2020 Switzerland will generally provide attractively low corporate income tax rates to all economic actors, whether Swiss or foreign, while at the same time introducing some new special tax regimes that are fully compliant with today's strict international standards and requirements!

As you know, we closely follow all Swiss tax reform developments and regularly advise our clients on the implications the reform may have on their businesses. Please do not hesitate to contact us if you have any comments or questions:

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