

# TAX UPDATE

Geneva, January 29, 2015

IFMA



# AGENDA

1. International and Swiss Corporate tax policy
2. Base Erosion and Profit Shifting
3. Swiss Corporate Tax Reform III
4. Automatic exchange of information
5. Individual tax overview
6. Various topics



01

# INTERNATIONAL AND SWISS CORPORATE TAX POLICY

# SWISS AND INTERNATIONAL CORPORATE TAX POLICY

## INTERNATIONAL TAX PERSPECTIVES

### ▪ EU Tax Dialogue

- Agreement signed in October 2014:
  - Switzerland will abolish the privileged tax regimes which distort trade competition
  - EU give up reprisals against Switzerland

### ▪ OECD actions

- The Forum on Harmful Tax Practices issued a list of criteria to determine when a tax regime is potentially harmful
- The Base Erosion and Profit Shifting (BEPS) actions plan was issued in July 2013

## SWISS CORPORATE TAX REFORM III

- **Abolishment of privileged corporate tax rulings:**
  - Holding Company (cantonal privilege)
  - Auxiliary or Mixed Company (cantonal privilege)
  - Domiciliary Company (cantonal privilege)
  - Principal Company
  - Finance Branch
- **Reduction of cantonal corporate income tax rates where necessary to maintain competitiveness**
- **Introduction of new tax regimes which comply with international standards**
- **Additional tax measures aiming to strengthen Switzerland attractiveness**



# 02

## BASE EROSION AND PROFIT SHIFTING



# BEPS IN FEW WORDS

BEPS aims to :

1. Tax profits where the effective business activity takes place

2. Put an end in aggressive tax planning

3. Avoid any international double non-taxation

# BEPS REPORTS : CALENDAR

N°	Action	Deliverables	Timing	Next steps
1	Tax challenges of the Digital Economy	Final report	Sept. 16, 2014	Further analysis re the interaction with other parts of the Action Plan BEPS
2	Tax effects of Arrangements Hybrid Mismatch	Report with draft recommendations	Sept. 16, 2014	Drafting of guidance re the implementation of the rules in domestic tax law
3	CFC rules	Discussion draft	Early April 2015	Final report announced by September 2015
4	Base erosion via interest deductions and other financial payments	Discussion draft	Until 6 Feb 2015	Final report announced by September 2015
5	Harmful Tax practices	Interim Report	Sept. 16, 2014	Review of the preferential tax regimes in light of substance and transparency
6	Treaty abuse	Report with draft recommendations	Sept. 16, 2014	Further analysis re the interaction with other parts of the Action Plan BEPS
7	PE status	Public consultation	Closed	Final report announced by September 2015
8	Transfer Pricing - Intangibles	Report with draft recommendations	Sept. 16, 2014	Further analysis re the interaction with other parts of the Action Plan BEPS
9	Transfer Pricing – Risks and capital	Discussion draft	Until 6 Feb 2015	Final report announced by September 2015
10	Transfer Pricing - Other High-risk transaction	Discussion draft	Until 6 Feb 2015	Final report announced by September 2015
11	Analysis of data derived from BEPS	Discussion draft	Late Jan 2015	Final report announced by September 2015
12	Disclosure of aggressive tax planning	Discussion draft	Late March 2015	Final report announced by September 2015
13	Transfer Pricing – Documentation	Report with draft recommendations	Sept. 16, 2014	Further analysis re confidentiality of the information and CbC reporting
14	Dispute resolution mechanism	Public consultation	Closed on 23 Jan 2015	Final report announced by September 2015
15	Multilateral Instrument	Final report	Sept. 16, 2014	Negotiation with OECD and G20 countries



# 03

## SWISS CORPORATE TAX REFORM III



# SWISS CORPORATE TAX REFORM III

## Summary of ETR by canton

Cantons	Current CIT	Announced CIT	Current cantonal status
Fribourg	19.60 %	13.72 %	Announced in December 2014
Genève	24.17 %	13 %	Official announcement by the Geneva Council
Jura	21.02 %	19.7 %	Progressive reduction of the legal tax rate. Additional reduction foreseeable.
Luzern	12.3%	N/A	11.3% in the lowest taxed community
Neuchâtel	18.37 %	15.6%	Progressive reduction
Nidwalden	12.7%	N/A	Current ETR under 15%
Obwalden	12.7%	N/A	Current ETR under 15%
Schwyz	11.7%	N/A	Communities of Freienbach/Wollerau
Valais	20.76 %	14 % - 16 %	Ongoing discussions in 2015.
Vaud	23.48 %	13.79 %	Official announcement by the Vaud Council : 13.79% since 2020. Progressive reduction.
Zug	14.6%	12%	Announced
Zurich	21.15%	14% - 16%	Ongoing discussions in 2015



# SWISS CORPORATE TAX REFORM III

## New regimes for mobile income

### ▪ License box (IP box)

- Reduction of tax burden for certain IP income
- Income from domestic and from foreign source are equally treated
- Applied by various EU member states
- IP box features:
  - Restrictive box: narrow IP definition (patents)
  - Substance requirements
  - Maximal tax relief : 80%
  - Cantonal tax ruling

### ▪ Notional interest deduction (NID)

- Tax deduction based on assets as per balance sheet (all companies)
- Income from domestic and from foreign source are equally treated
- Equal treatment of equity financing and debt financing
- NID system features:
  - Notional interest deduction only on surplus equity
  - Reduction of the tax basis
  - Safe harbor rate (arm's length principle), but not less than 2%



# SWISS CORPORATE TAX REFORM III

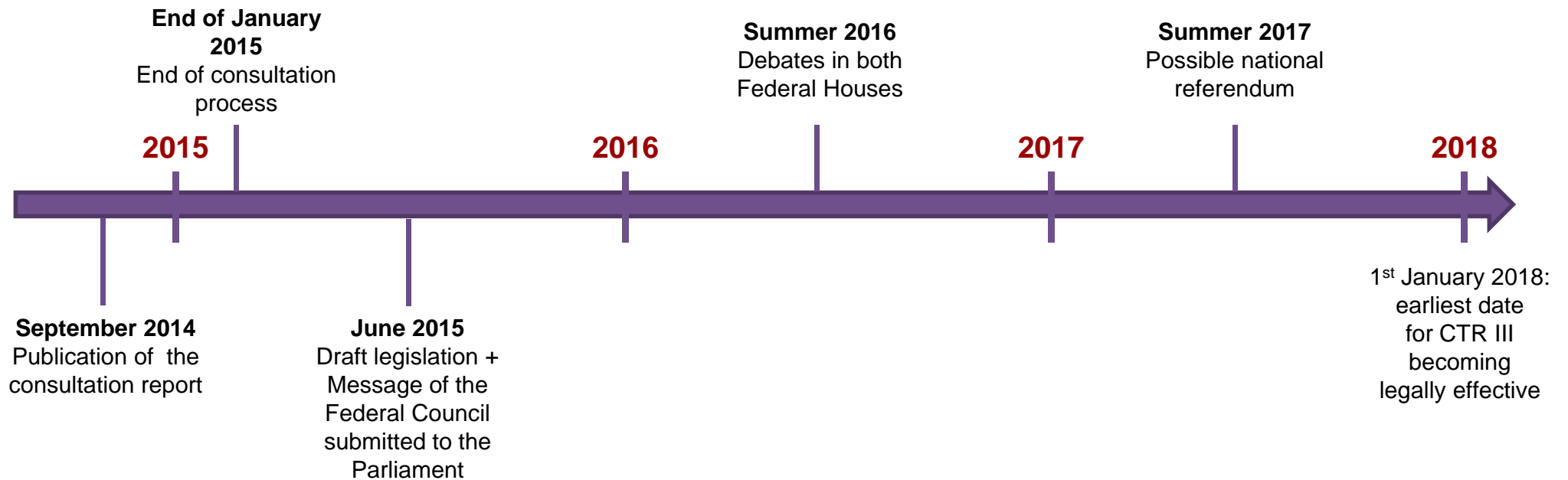
## Proposed tax measures to increase attractiveness of Switzerland:

- Abolition of issuance tax on equity
- Participation relief:
  - Direct exemption from the taxable basis (e.g. dividends no longer offset loss carry forward)
  - No minimum holding periods or quotas
- Loss carry forward without limitation
- Swiss Holding Company could offset losses incurred by its subsidiaries provided certain requirements are met
- Step-up of value of business to market value:
  - Change from privileged tax status to ordinary taxation
  - Immigration into Switzerland

## Compensatory measures:

- Introduction of a capital gains tax on privately held assets (capital losses would become tax deductible from capital gains)
- Limitation of the partial exemption on dividend received by individuals from qualifying participations at 70%

# EXPECTED TIMELINE UNTIL IMPLEMENTATION



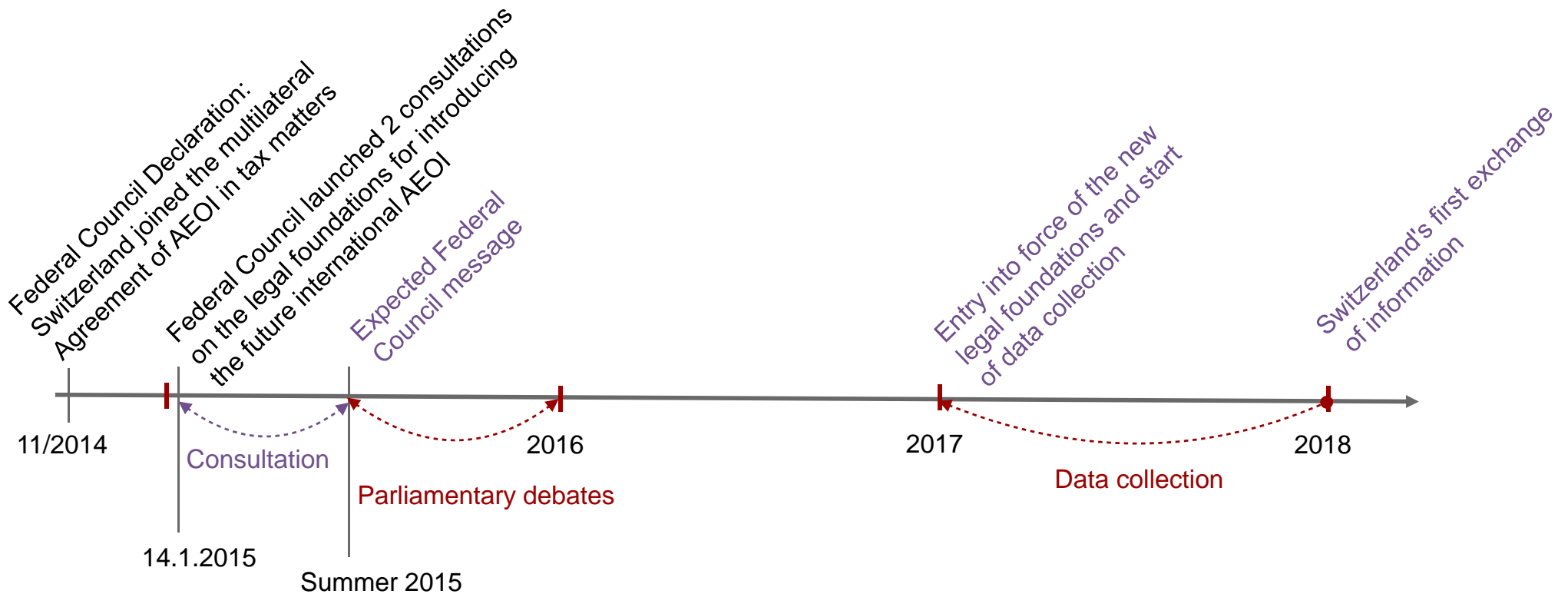
2-year transitional period for amendment of Cantonal legislation



04

## AUTOMATIC EXCHANGE OF INFORMATION

# AUTOMATIC EXCHANGE OF INFORMATION (AEOI)



- Switzerland will separately determine with which countries the AEOI will apply
- Issues of regularisation of the past would be analyzed on a case by case basis and according to the possibilities offered by the partner states
- Domestic bank client confidentiality will not be affected by the implementation of the new global standard



# 05

## INDIVIDUAL TAX OVERVIEW

# LUMP-SUM TAXATION REGIME

- Refusal of the federal initiative « *Halte aux privilèges fiscaux des millionnaires* »
- Refusal of the Geneva cantonal initiative « *Pas de cadeaux aux millionnaires: initiative pour la suppression des forfaits fiscaux* »
- Lump-sum taxation regime remains applicable at federal level and at cantonal/communal level (exceptions: Appenzell Outer-Rhodes, Basel-City, Basel-Land, Schaffhausen and Zurich)
- Legislative amendments (introduced by the federal law dated 28.9.2012 regarding the lump-sum taxation) :
  - **Taxable basis:**
    - Federal level: at least CHF 400'000 or 7 times the housing expenses of the tax payer (new art. 14 FDTL will come into force on January 1<sup>st</sup>, 2016)
    - Cantonal level: must set at their discretion a minimum threshold (new art. 6 FTHL came into force on January 1<sup>st</sup>, 2014 – transitional period until January 1<sup>st</sup>, 2016 to adapt their law)
  - **Transitional period of 5 years for the existing rulings**

*FDTL: Federal Direct Tax Law*

*FTHL: Federal Tax Harmonization Law*





# INITIATIVE OF A SWISS FEDERAL ESTATE AND GIFT TAX

- Project of modification of the Federal Constitution according to a federal order of December 12<sup>th</sup>, 2014 concerning the popular initiative:
  - Introduction of a federal tax on inheritance and gift
  - 2/3 of tax attributed to social security (AHV) and 1/3 to cantons
  - Flate rate of 20% on:
    - Estate exceeding the threshold of CHF 2 mio<sup>1</sup> (aggregate of the estate, regardless the number of heirs)
    - Gifts exceeding CHF 20'000 per year and recipient (tax due by the donor)
  - Gifts will be retroactively subject to 20% tax from January 1<sup>st</sup>, 2012
  - Exemptions: Gifts and estates to spouses, registered partners and tax exempt entities such as charities
  - Envisaged reduction in case of transfer of businesses or agricultural operations, provided the beneficiaries continue the operations for at least 10 years
  
- The Federal Council recommends to reject the initiative
  
- The votation date is set on June 15, 2015

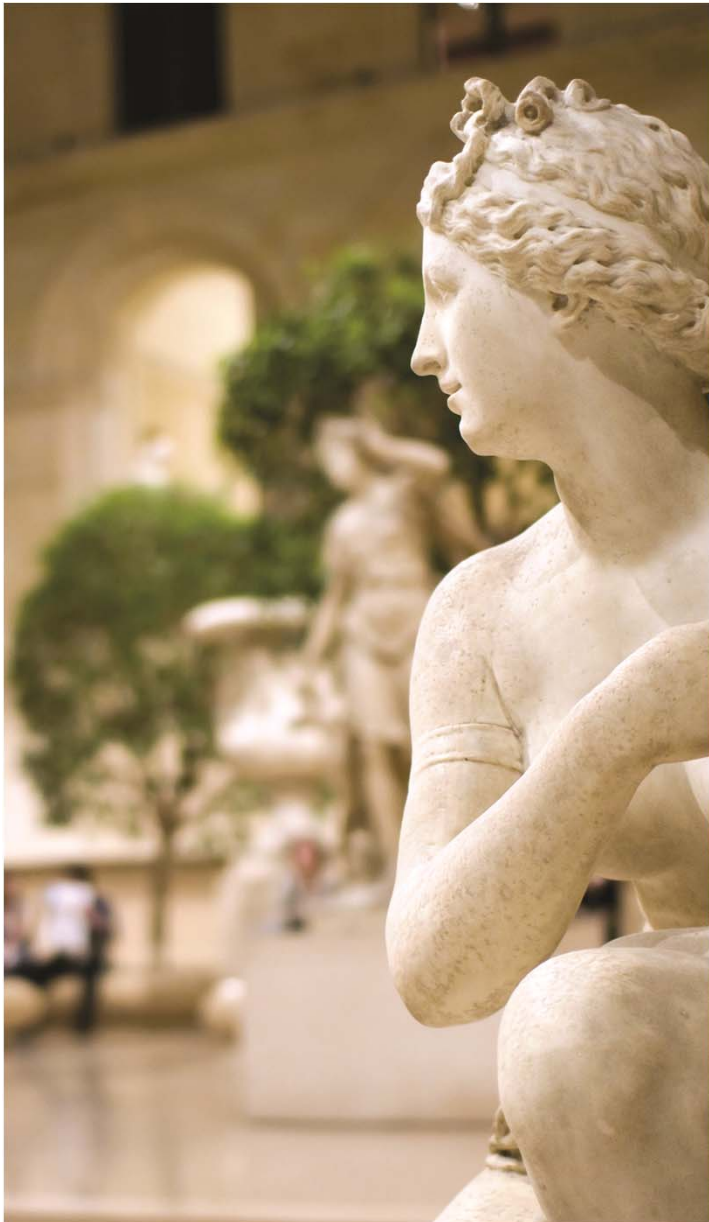
<sup>1</sup> Including the gifts made from January 1<sup>st</sup>, 2012 - The paid gift tax is credited to the inheritance tax.



# NEW ORDINANCE ON EXPATRIATES (OEXPA)

- New Ordinance on expatriates dated January 9, 2015 replacing the Ordinance dated October 3<sup>rd</sup>, 2000
- Modifications/clarifications:
  - Limitation of the scope of the OEXPA (expatriate's notion)
  - Further details regarding housing expenses, travel and moving expenses, schooling expenses and flat-rate deduction
  - Introduction of the declaration of particular business expenses in the certificate of salary
  - Abolition of the letter-circular of the Federal tax authorities dated April 7, 1988 concerning the financial participation of international companies to cover the schooling expenses of foreign collaborator children
- Entry into force: January 1<sup>st</sup>, 2016

# FRANCO-SWISS DOUBLE TAXATION AGREEMENT RELATING TO INHERITANCE



- At France's request, a revised agreement was negotiated. The Swiss Council of States asked for a renegotiation.
- As France and Switzerland did not reach an agreement, France rescinded the Tax Treaty with effect on December 31, 2014.
- As of January 1<sup>st</sup>, 2015, the French-Swiss estates are not any more governed by the double taxation agreement but by the domestic law of each country.

↪ **Potential double taxation of estates**



# 06

## VARIOUS TOPICS

1. NEW SWISS ACCOUNTING LAW
2. SWISS WITHHOLDING TAX REFORM
3. UPDATE ON CONVERSION DIFFERENCE
4. UPDATE ON NOTIFICATION PROCEDURE
5. CHOSEN 2014 TAX CASE LAW
6. 2014 TAX CIRCULARS / CHANGE IN VAT LAW



# 1. NEW SWISS ACCOUNTING LAW

The new accounting law is mandatory since January 1<sup>st</sup>, 2015.

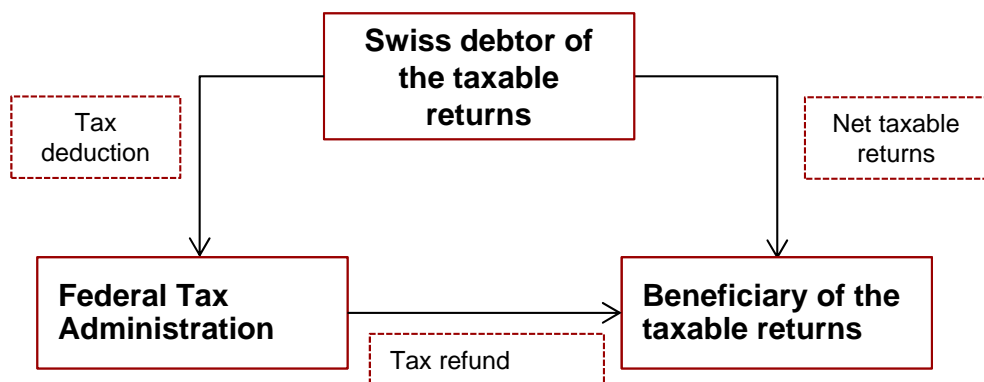
- Commercial Years which begin from January 1<sup>st</sup>, 2015
- Effects in term of valuation and presentation of the financial statements
- Summary of the main tax impacts:
  - In general, tax books equal commercial books (“principe de détermination”)
  - Lump-sum provisions on stocks and debtors remain tax deductible
  - Provisions and expenses must be economically justified to be tax deductible
  - The individual valuation of participations will determine the need of provisions
  - The financial statements may be established in a foreign functional currency
  - The presentation of the F/S may have a tax impact
    - Own shares, foreign functional currency, valuation as per market price
  - The independents with a turnover higher than CHF 500'000 must hold books in compliance with the accounting law:
    - The work in progress booking is mandatory
    - Immediate effect on the progressivity of the tax rate applicable to individuals' taxable revenue

## 2. SWISS WITHHOLDING TAX REFORM

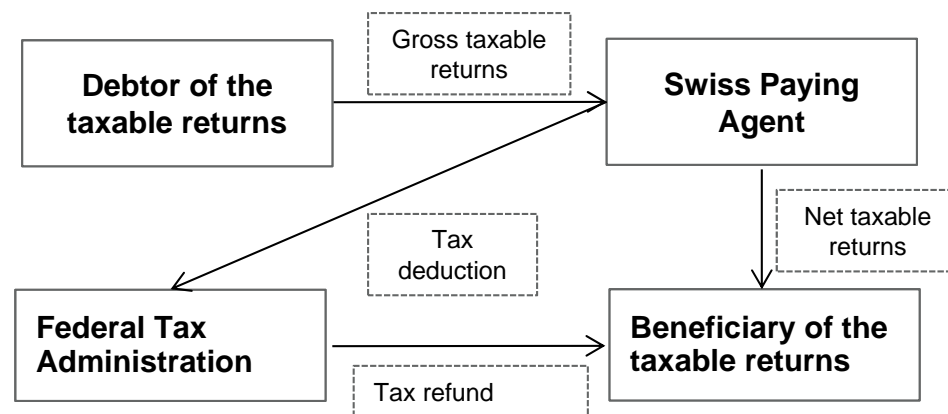
**Agenda** : Consulting process until March 31, 2015.  
The Reform would be legally enacted concurrently with the new system of automatic international exchange of tax information.

Change from the “debtor system” to the “paying agent system”

### Debtor system



### Paying agent system



### 3. UPDATE ON THE CONVERSION DIFFERENCE



- In 2009, the Federal Court stated that the conversion differences are tax neutral; they have no commercial justification, they are only accounting entries

#### Update:

- On July 2014, the « Cour de Justice » of Geneva issued four judgments confirming the 2009 case law
- Three tax appeals were filed to the Federal Court. The Federal Court will have to issue a new case law regarding the tax treatment of conversion differences

## 4. UPDATE ON THE DECLARATION PROCEDURE



- In 2011, the Federal Court stated that the deadline of 30 days is a forfeiture deadline
- Non-respect of the deadline entails the right to benefit from the declaration procedure
- Ordinary procedure must be applied (payment and reimbursement request (!! Late interest))

### Update:

- Various cases are pending in front of the Federal administrative court
- Parliamentary initiatives are pending in front of the Federal chambers
- Federal Tax Administration decided to suspend the decisions on tax appeals until a decision is taken at the level of the Federal administrative court or Federal court



## 5. CHOOSEN 2014 CASE LAW

Reference	Subject	Comments
TAF, 20.2.14 A-4951/2012	Notification procedure – International relationship	<ul style="list-style-type: none"> <li>• Notification procedure is not applicable</li> <li>• Quality of the beneficial owner</li> </ul>
TF, 4.2.14 2C_730/2013	Dividend due date – cancellation of the dividend decision	<ul style="list-style-type: none"> <li>• Confirmation of the (1) dividend due date and (2) WHT claim due date</li> <li>• In case the dividend is due and the WHT became due, the WHT is due even if the dividend is cancelled or modified</li> <li>• Issuance stamp tax is due on the additional contribution</li> </ul>
TF, 21.5.14 2C_927/2013 2C_928/2013	Hidden profit distribution - Simulated loan	<p>Jurisprudence before 2014:</p> <ul style="list-style-type: none"> <li>• Analysis of the loan terms</li> </ul> <p>2014 jurisprudence:</p> <ul style="list-style-type: none"> <li>• Analysis of the beneficiary situation</li> </ul>

TAF: Federal Administrative Court

TF: Federal Court

WHT: withholding tax



## 6. 2014 TAX CIRCULARS / CHANGE IN VAT LAW

### **New tax circulars:**

- Circular n° 40 – « Déchéance du droit au remboursement de l'impôt anticipé des personnes physiques selon l'article 23 LIA »
- Circular n° 41 – « Libre passage dans la prévoyance professionnelle vieillesse, survivants et invalidité »

### **Draft of partial revision of the 2010 VAT law – envisaged entry into force on January 1<sup>st</sup>, 2016:**

Envisaged modifications regarding the VAT liability:

- Worldwide turnover
- Companies financed by donations or subsidies will be liable to VAT
- Sale of goods of small values on the Swiss territory for an amount exceeding CHF 100'000
- Public authorities: turnover with third parties exceeding CHF 100'000



# QUESTIONS AND ANSWERS



**THANK YOU FOR YOUR  
ATTENTION!**

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