Swiss-American Chamber of Commerce
Talacker 41, 8001 Zurich, Switzerland, Telephone: +41 43 443 72 00, Telefax: +4143 497 22 70
www.amcham.ch, e-mail: info@amcham.ch

By e-mail to:
Swiss Federal Tax Administration
Eigerstrasse 65
3003 Bern
Switzerland

Zurich, January 30, 2015

Consultation process for the draft federal law on tax measures to strengthen the competitiveness of the business location of Switzerland (Corporate Tax Reform Act III) – Deadline: 31 January 2015 (this is an approximate translation of the official letter sent in German to the Federal Tax Administration on January 30)

Dear Sir/Madam,

We refer to the letter of Federal Councillor Eveline Widmer-Schlumpf of 19 September 2014. Thank you for the opportunity to express our view on the Corporate Tax Reform III (CTR III). We will first comment generally on the legislative proposal before dealing with the individual questions.

The Swiss-American Chamber of Commerce (Swiss-Amcham) is a Swiss association with around 2,400 members, including 1,500 international companies based in Switzerland – large and small companies. Around 70% of these companies are Swiss companies. As the largest association of multinational companies (Swiss and foreign companies, both large and small), we deal with all topics affecting Swiss-based companies' operations in Switzerland, in addition to conventional Switzerland-USA economic topics.

Basic considerations

Many of our members are deeply unsettled by the developments in Switzerland. While the business location Switzerland was for a very long time the epitome of stability and planning certainty, companies are now unsure of how much tax they will pay in future, whether Switzerland will still to be well integrated in European markets through bilateral contracts, whether companies can continue to employ the necessary employees from Europe and third countries and whether Switzerland will be a member of a potential future transatlantic free trade area. Following the "Minder" initiative and the initiative against mass immigration, but also following failed initiative referendums such as Ecopop, Swiss National Bank gold or the 1:12 initiative, these companies are insecure and sceptical − explicitly so behind closed doors − about the business climate in Switzerland. For this reason, many of our members are currently actively engaged in projects to carry out large-scale investigations regarding the relocation of parts of their operations and develop alternatives for other locations. The majority of decisions to actually relocate these operations have not yet been made, but are at least in the preparation stages. The decision of the

Swiss National Bank to stop supporting a minimum exchange rate to the Euro has massively increased the cost of doing business in Switzerland and accelerated the planning process in many companies.

In this problematic environment, revising Swiss corporate tax law is of central importance. A good solution will be essential for the financial framework conditions of these companies and for the competitiveness of Switzerland. The CTR III is becoming a litmus test for a pro-business climate and the political will of Switzerland to offer a competitive environment for international companies.

Swiss-Amcham generally welcomes the main thrust behind the CTR III in terms of tax policy. Developments in international tax law at the OECD, G20 and EU level have reduced the appeal of Switzerland for international activities, which is why the efforts of the Swiss Federal Council to strengthen tax competitiveness are supported by Swiss-Amcham. For Switzerland, it is crucial that new, attractive and internationally accepted models are implemented for tax privileges lost.

A continuation of previous tax regimes would lead to retaliatory measures from abroad and render these regimes unattractive and useless; Swiss-Amcham therefore sees no alternative but to abolish these regimes. The specific new regulations proposed for international income, namely the Licence Box and notional interest deduction on security equity are central substitute measures. The combination of these two new, internationally accepted regulations combined with cantonal profit tax cuts is the right "way forward" in the view of Swiss-Amcham.

Swiss-Amcham seeks a strong simplification of the draft with an explicit focus on the two objectives of the reform: to strengthen the competitive position of Switzerland for income of international companies and to restore the legal and planning certainty for these companies. The reform should not be made expensive and complicated by other, purely desirable, elements, which would reduce its chances of success in Parliament and with the population (with regards to a very possible referendum). It is important to take into account the realpolitik conditions. Some of the proposed measures, such as the abolition of issuance duty on equity or the elimination of the minimum participation threshold in the case of participation deduction, are indeed desirable but expensive and contribute little to achieving the stated objectives.

Particular attention must be paid to the special situation of some cantons. We refer here, for example, to the joint study by The Boston Consulting Group and the Swiss-American Chamber of Commerce "Multinational companies in Geneva and Vaud: A growth engine at risk"[1]. Cantons such as Geneva and Vaud, as well as Zurich, Basel-Stadt, Zug, Schaffhausen, Basel-Land and others make a disproportionately large part of the large contribution from privileged companies to the Federal Treasury and to cantonal fiscal equalization, and they should accordingly be given special consideration. Specifically, the decision to introduce the step-up and the notional interest deduction should be left to the cantons. And in terms of vertical and horizontal equalisation measures, which the Swiss-Amcham will only mention in short, solutions should not be limited to those that are simply proportional, rather consideration should be given to the specific situations of these cantons.

[1] http://www.amcham.ch/publications/downloads/20120612_bcg_amcham_study_en.pdf

Summary of the position of Swiss-Amcham on the different proposals

The introduction of a **Licence Box** at the cantonal level is an essential element to achieve the objectives of the reform. To ensure Switzerland remains attractive in this area in the long term, however, we argue for a broader definition of the qualifying intellectual property rights in line with what other EU members have or are introducing and in line with EU/OECD draft guidelines, especially given the restrictive impact of UK/German agreement on the "Modified Nexus Approach" that will link the License Box benefit to R&D. In addition, we also argue for the supplementary introduction of an **input incentive**. Swiss-Amcham considers these tax incentive measures for innovation as absolutely central.

We also support the introduction of a **notional interest deduction** limited to security equity. To meet increasingly important substance requirements in international tax law, international corporations are interested in locations with an attractive package for various activities. In addition to good conditions for research and development activities, Switzerland should also offer competitive conditions for corporation financing activities. However, the calculation of the interest rate based on the yield on ten-year government bonds is only useful as a "safe-harbour" approach; in addition, there should be the option of using risk margins and risk-appropriate equity interest rates underpinned by third-party comparative studies that take suitable account of corporate and real economic conditions of the individual case. This measure should be optional for the cantons.

In order to prevent substantial multiple taxation with regard to capital taxation when abolishing the tax regimes, **adjustments in terms of capital tax** are essential. The proposed flexibility regarding mobile assets provides a useful complement to the existing possibility of set-off (Art. 30 para. 2 of the Federal Law on Tax Harmonization [StHG]). From the perspective of Swiss-Amcham, it should however be fundamentally down to the canton to waive capital tax entirely.

Swiss-Amcham also supports the introduction of a regulation for **revealing hidden reserves (step-up)**. However, it is very important that the step-up remains **optional for the cantons** because such measure still bears uncertainty as to its international acceptability and because it cannot be implemented in parallel to a sharp corporate income tax rate reduction in cantons which have chosen this latter (more sustainable) strategy as the key replacement measure of past cantonal tax privileges. Swiss-Amcham is also in favour of granting the companies the option of using the step-up if they wish to do so and the option of limiting the reserves revealed on the tax balance sheet to the percentage (quota) previously exempt, so that there are no tax consequences at the time revealing the reserves.

Swiss-Amcham generally welcomes the **abolition of issuance duty on equity**, but also sees the possibility of waiving this measure, if need be, should the acceptance of the entire reform package be at risk due to uncertainty with regard to the question of financing.

Swiss-Amcham welcomes the introduction of **loss offsetting for an unlimited period of time**, but the loss offsetting limit of 80% of annual net profits (before offsetting losses) must be done away with. Support should be given to allowing expired losses carried forward from foreign corporation companies. Likewise, the proposed extension of the **participation deduction** to **free float shares** and the abolition of **holding period requirements** with regard to capital gains (except banks) makes sense for the tax system and would be welcomed. With a view to focusing on the reform goals, Swiss-Amcham is in favour of including all these measures separately on the agenda at another time.

The adjustment of the partial taxation rules and the introduction of **a capital gains tax on securities** is decidedly rejected by Swiss-Amcham.

Questions to the consultation participants

1. Do you agree with the main fiscal thrust behind the CTR III that consists of the following elements (para. 1.2.1 of the notes)?

a. Introduction of new regulations for mobile income that meet international standards

Swiss-Amcham emphatically supports these new regulations. The international competitive environment for international companies and their international income are extremely competitive and Switzerland must do everything to fully exploit the opportunity taking into account current and future EU/OECD regulations. Efforts must be made to ensure that any necessary corrective actions can be carried out swiftly. Trying to find a "definitive" solution in this rapidly changing environment which will last for many years can lead to less than perfect solutions. To maintain the necessary flexibility, as much as possible should be regulated by way of ordinances. Only the main features of measures should be set out in the Direct Federal Tax Act (DGB) and StHG.

b. Cantonal profit tax rate reductions

The situation in the cantons varies. Depending on the economic structure and profit tax rate, profit tax cuts are essential to complement targeted tax policy substitute measures for international companies to achieve cantonal appeal. This is especially the case because deep general profit taxation is widely accepted internationally, meaning that cuts represent the most promising long-term instrument to ensure fiscal competitiveness. In contrast, special measures depend on ever-changing international acceptance and therefore offer only limited legal and planning certainty.

To give the cantons the necessary financial leeway, vertical financial equalisation measures are important. A contribution is even more justified considering that the federal government profits significantly, in tax terms, from a strong business location and the international companies based here. Federal support will allow the cantons to implement those measures that are appropriate given the specific situation of each. If need be, the federal government must grant even further concessions to the cantons. Cantons such as Geneva and Vaud, as well as Zurich, Basel-Stadt, Zug, Schaffhausen, Basel-Land and others, who, with their privileged companies, currently make a disproportionately large contribution to the Federal Treasury and to cantonal fiscal equalisation, should accordingly be given special consideration.

The level of cantonal profit tax rates falls entirely within the responsibility of the cantons. Since cantonal profit tax cuts are based on reforms by the cantons themselves, the related revenue shortfalls are not attributable to the CTR III.

c. Further measures to improve the corporate tax law system

Some proposed measures to improve the corporate tax law system are judged on their merits as questionable in parts and, in terms of an attractive business location, as unfavourable. Shortfalls in revenue that are the root of some of the measures are not completely clear, but are at any rate substantial. Without these revenue shortfalls, financing the reform would be easier. Capital gains tax could be dispensed with. The forecast regarding the financial impact would also be more accurate.

According to a broad understanding, CTR III should be goal oriented and focused accordingly. The project organisation of the federal government and the cantons, for example, rightly advises against adjustments that go beyond the scope of the CTR III "and endanger or at least delay the whole reform". We share this understanding. To secure the success of the CTR III, the reform should be aimed at its central task, i.e. preserving/strengthening fiscal competitiveness. General measures to improve the tax system have no direct relation to the competitiveness of the location and therefore do not contribute to finding an urgent solution to the problem. They do, however, increase the complexity of the reform considerably. In order not to unnecessarily burden the political process and jeopardise the urgent search to find a solution to the question of location, such measures, if any, must be discussed in another context, separate from the CTR III.

2. Do you agree with the following measures (para. 1.2.3. of the notes)?

a. Abolition of the cantonal tax status

Different countries use different solutions for taxing international activities. The Swiss solution is no more harmful than others in light of a "fair" tax competition. As a small, open economy without significant raw materials, Switzerland relies on an attractive tax conditions. Other countries benefit from the strong business location that is Switzerland, namely thanks to its high import demand and high foreign investment by companies based in Switzerland. In the context of international developments in the field of taxation, however, the systematic development of Swiss tax law is inevitable. Countermeasures by key economic partners would significantly impair the planning and investment certainty of international companies in Switzerland, severely damaging the appeal of this business location.

Therefore, the Swiss-Amcham supports the abolition of the cantonal tax status as the "least bad" solution.

b. Introduction of a Licence Box at the level of cantonal taxes

Editorial note

The proposed draft Art. 24b of the StHG comprises five paragraphs. The second paragraph (beginning with “This discount applies [...]”), and the third paragraph (beginning with “A decisive contribution to the development is [...]”), however, both contain the paragraph number “2”.

General comments

Research, development and innovation (R&D&I) play a central role in enhancing the technological capabilities of a country. They relate to the education sector as well as science, and affect not only technological progress and productivity, but also a country’s international competitiveness, growth and employment. R&D&I are therefore vital for technological developments, innovation processes, new products, processes and services. In Switzerland, R&D&I activities of private companies play a way over proportional role compared with the international benchmarks. These private initiatives need to be protected and supported by all means available. We therefore emphatically support appropriate fiscal incentives and see them as an important solution to strengthen the business location of Switzerland. We will therefore examine this measure in detail.

The recent strengthening Swiss Franc is not only a huge burden for the export industry. Moreover, the growing cost gap between Switzerland and the rest of the world is also questioning Switzerland as a location for R&D&I. And since R&D&I activities seem to be key under the OECD’s nexus approach at least to some extent, the strong Swiss Franc is indeed threatening Switzerland as business location. Therefore it has become even more vital to introduce input R&D&I incentives like competing countries have.

With draft Art. 24b of the StHG (Income from patents), the plan is to introduce a Licence Box at the cantonal level, meaning that income generated from qualifying intellectual property rights will be included in the tax base subject to a discount of up to 80%. The tax system proposed in draft Art. 24b of the StHG is limited to the output incentives (partial tax exemption for income from intellectual property rights) and is based largely on the British patent box. No such regulation is proposed at the federal level.

The introduction of a Licence Box at the cantonal level is a necessary fiscal substitute measure and is an essential element to achieve the objectives of the reform. To ensure Switzerland remains attractive in this area in the long term, however, we call for a broader definition than merely patented rights, knowing that Switzerland's corresponding room for manoeuvre is limited internationally. Against this background, in particular, Switzerland must strive for the most flexible possible configuration of legal provisions regarding the Licence Box, within the limits of what other EU countries are doing and the draft guidance provided by the OECD following up the UK / Germany agreement in December 2014 on the R&D based “Modified Nexus Approach”.

In general, all measures currently developed in other EU countries (such as the Irish Knowledge Development Box (KDB) or the Dutch WBSO and RDA, need to be evaluated constantly in the further elaboration of the Swiss support of R&D&I.

To secure Switzerland's place as an important location of R&D&I in terms international fiscal competition, we strongly argue for the additional introduction of an input incentive (multiple deduction of expenditure on R&D&I) as part of an integrated R&D&I strategy (see point 3 below).

Qualifying intellectual property rights

In accordance with draft Art. 24b, para. 1 and 2, qualifying immaterial property rights are:

- Patents
- Supplementary protection certificates
- Exclusive licences to patents
- First-to-file protection under Art. 12 of the Federal Law on Drugs and Medical Devices (HMG)

This definition of the intellectual property rights covered is too narrow in our view.

The restriction on the qualifying intellectual property rights to registered patents practically forces the companies concerned to have new and profitable inventions patented. If a company does not consider patenting an invention due, for example, to competitive tactical reasons (confidentiality), it cannot benefit from the Licence Box for income from this invention. The exclusion of patentable, but not patented intellectual property rights is extremely problematic. The restriction on registered patents is indeed understandable from a practical point of view; however, it is problematic that companies avoiding patenting for business reasons should be fiscally penalized. In this way, tax law unreasonably interferes with business freedom. For the purposes of decision neutrality in tax law, it is therefore necessary to at least supplement draft Art. 24b, para. 2 of the StHG with revenue from "patentable inventions" and clarify that it includes revenue from expired patents, but only within the limits of other existing EU patent / innovation box regimes which are still acceptable after they have been scrutinized by the EU Commission and the OECD.

Research, development and innovation activities, however, also often lead to intangible assets other than patentable inventions. For example, topographies, design, software, plant varieties and plans are legally protectable intangible assets that arise from innovative activities. If no consideration is given to privileging these assets, companies investing in these areas will be disadvantaged. In terms of a further defined box with respect to qualifying intellectual property rights, we therefore propose that the definition be extended to "registered rights, rights that can be registered, or other proprietary rights, such as patents, topographies, design, software, plant varieties and plans" from research, development and innovation activities, but only within the limits of other existing EU patent / innovation box regimes which are still acceptable after they have been scrutinized by the EU Commission and the OECD.

The inclusion of licenses to qualifying intellectual property is to be welcomed as this also privileged economic ownership. A decisive element for determining the suitability of the Licence Box for foreign corporations, especially those based in the US, however, is that the exclusivity of a license is assessed considering economic aspects and not in relation to civil law. Because within a group licenses are de facto always exclusive, this criterion should be avoided entirely in intercompany relationships. At the very least, it should be sufficient that an intra-group license is "exclusive except as to the licensor".

The still unclear, but in the long run hardly sustainable international standards emphasise the need for a flexible legal solution. We are aware that the definition of qualifying intellectual property rights is also dependent on the approach used by the OECD as an international standard for determining the necessary substance of a Licence Box. Under these conditions, we propose a way of defining qualifying intellectual property rights that is as flexible as possible, yet internationally acceptable. In our view, it makes sense to avoid setting out a conclusive list of qualifying intellectual property rights through legislation, in favour of authorising the Federal Council, in collaboration with the Swiss Tax Conference if need be, to regulate qualifying intellectual property rights by way of an ordinance. In doing so, the Federal Council must take into account international developments and, in terms of an international MFN principle, choose and adapt to the broadest solution in line with applicable international standards. If the international framework conditions required an adjustment of qualifying intellectual property rights, it should be noted that a tax privilege concerning an already qualifying intellectual property right for existing situations can only be withdrawn with generous transition periods (legal certainty).

Substance requirements

The international standards are increasingly demanding substance requirements to ensure that income is taxed at the place where value is actually added.

In accordance with draft Art. 24b para. 2 (or para. 3; see editorial note), a significant contribution is deemed in particular to be the creation or further development of an invention or a product that is based on this invention. Within the corporation, control of the development alone is classed as a significant contribution and, in the case of an usufruct or an exclusive licence, merely belonging to that corporation that makes the major contribution suffices. Fortunately, the definition of substance requirements is broad and is to be welcomed.

The R&D expenditure-related "modified nexus approach" discussed within the OECD should be rejected. However, we acknowledge that developments at an international level currently lean in this direction. Should this become standard for determining the necessary substance, draft Art. 24b para. 2 (or para. 3; see the editorial note) of the StHG would require adjustments.

We reject the "nexus approach" for the following reasons:

- The "nexus approach" leads to a "ring fencing", which is classified as state aid and is therefore prohibited in principle under international standards. Any kind of "ring fencing" must therefore be avoided under the CTR III.

- The expenditure-related calculation of the qualifying income from intellectual property rights violates the neutrality of company decisions.
- Using the “nexus approach” favours companies that carry out their research and development activities exclusively in Switzerland. This leads to an improper and constitutionally problematic situation where preference is given to certain companies.
- In international competition, the “nexus approach” means the small economies are penalised over the large ones.
- The important factors of risk and capital are not taken into account with the “nexus approach”.
- The “nexus approach” creates a tax fiction by restricting the IP value contribution (that generates IP revenue) to the strict R&D expenses that were spent over the last 10 years or so, often before the 1st IP revenue is generated, while other activities are equally or even more critical in such value contribution.

However, should the “nexus approach” become established internationally, it is essential that a broad definition is chosen for the immaterial goods qualifying for the Licence Box given the significantly restricted scope of the Licence Box and that Switzerland aims to additionally promote R&D&I on the input side (multiple deduction of expenditure for R&D&I) to remain internationally competitive (see point 3 below), while internationally acceptable.

Calculating the relevant income and amount of relief

The selected residual method for calculating the relevant income as well as the relief at the taxation base level must be welcomed and, in its current form, gives no further cause for comment.

The amount of relief is entirely down to the cantons, as is the case today for foreign income in administrative and mixed enterprises (Art. 28, para. 3, C of the StHG), for which the Licence Box is to be the central substitute measure to maintain fiscal appeal. A restriction on the discount to a maximum of 80% must therefore be avoided with a view to flexibility.

c. Introduction of a notional interest deduction

Due to recent developments in international tax law (especially the BEPS initiative of the OECD), we expect that the process of determining profit for tax reasons will be more closely connected with substance criteria in the future than it is today. To meet increasingly important substance requirements in international tax law, international corporations are interested in locations with an attractive overall package for various activities. This ultimately facilitates the centralisation of corporation functions into one location aimed at promoting efficiency. As a result, Switzerland does well not only to create attractive framework conditions for research and development activities, but also to promote the financing activities of international corporations so that corporation financing, treasury centre, intercompany and leasing activities can be increasingly located in Switzerland and the appeal of the framework conditions for activities already exercised from Switzerland can be maintained.

The model of a notional interest deduction limited to security equity ensures outside capital is dealt in the same way as substitutable equity. The model thus proves to be targeted and makes sense in terms of the tax system and must therefore be supported – both for federal tax as well as the state and municipal taxes.

However, the calculation of the interest rate based on the yield on ten-year government bonds is only useful as a “safe-harbour” approach (with a 2% minimum rate). For example, in the case of cross-border corporation financing, the real interest rate is regularly much higher than in Switzerland due to the currency and risk situation. Accordingly, it should be possible to validate the starting point for the imputed equity interest rate essentially using the individual risk structure of the assets of the company concerned. Based on this, in addition to determining the applicable equity interest rate using the “safe harbour” approach, there should be the option to use risk margins and risk-appropriate equity interest rates underpinned by third-party comparative studies that even deviate, under certain circumstances, from the “safe-harbour approach”, but that take suitable account of corporate and real economic conditions of the individual case. This is necessary to achieve the location and efficiency objectives of this measure.

The existing and future treasury centers based in Switzerland belonging to Swiss and international corporations justify not least a substantial tax base, which must be taken into account when assessing the measure in terms of budgetary policy. If the appeal is maintained/increased, further corporate financing activities are to be expected in light of international developments, which will have a positive influence on the consequences for budgetary policy. If, conversely, suitable substitute measures to maintain attractive fiscal framework conditions in terms of company financing, treasury centre, intercompany leasing and factoring activities fail to materialize, Switzerland can expect a significant exodus of financing activities currently based in the country.

In connection with a reform of withholding tax, the notional interest deduction is a key element with regard to the aim of stimulating the Swiss capital market (the shift to a paying agent tax without the simultaneous introduction of a risk-appropriate interest rate adjustment of profit tax will not achieve this goal).

To prevent misuse and to take into account the concerns of some cantons regarding excessively large losses, a deduction of interest on non-operation-critical assets (such as cash/war chest, holiday homes, private asset management, etc.) as well as on corporation-internal receivables emerging from the sale of investments or dividends (i.e. risk of a “double-dip”) must be excluded. These assets are therefore to be backed with a core capital ratio of 100%. To be able to competitively tax financing activities using a targeted approach, the margin taxation must also be limited to security equity backed with corporation-internal receivables.

d. Adjustments to capital tax

In order to prevent substantial multiple taxation with regard to capital taxation when abolishing the cantonal tax status, adjustments in terms of capital tax are essential. This is even more true in the case of finance companies that typically have a lot of equity that have so far benefited from further reduced capital taxes. The proposal that cantons could allow equity attributable to investments, intellectual property rights and loans to corporation companies to be included in the tax base is very welcomed accordingly. It is a useful complement to the existing possibility of offsetting profit tax against capital tax (Art. 30, para. 2 of the StHG).

It should be the cantons' decision whether to completely abolish capital tax. This arises initially in the context of the principle of taxation according to economic performance, which is not compatible with capital tax. Reference is made in this regard to the Swiss Corporate Tax Reform 1997 (BBL 1997 II, 1190). In addition, about two-thirds of the cantons were transferred to a proportional profit tax rate, with the real reason for levying the capital tax no longer applying − at least in these cantons − (see BBL 205, 4811). Finally, the capital tax in relation to countries with CFC rules or with a taxation according to the universality principle (such as in particular the USA) leads to unjustified multiple taxation inherent to the system; this is because, unlike the income taxes, capital taxes cannot be offset.

e. Regulation on revealing hidden reserves (Step-up)

Swiss-Amcham strongly supports the revealing of hidden reserves arising from tax privileges (step-up) upon a change of status to ordinary taxation in the StHG and DBG (which will also benefit principal companies). Support is also given to the consistent application (in the tax system) of the same principles when entering or exiting privileged taxation schemes, at the beginning and end of a tax exemption, when an institution converts into a legal entity and vice versa, when a company relocates to and from Switzerland, as well as in the case of change in the international tax allocation.

We believe that this measure may not be adequate for specific Cantons that choose to substantially reduce their tax rates as a more sustainable long-term strategy.

Swiss-Amcham is therefore in favour of granting flexibility to the Cantons to apply or not the Step Up and, for those Cantons that will apply it, to grant the companies 2 options:

First, companies should be allowed not to apply the Step Up upon the entry into force of the new law when they move from privileged status to ordinary taxation.

Second, if they elect for the Step up, they should have the option of limiting the reserves revealed on the tax balance sheet to the percentage (quota) previously exempt. Any tax payment could therefore be avoided at the time the reserves are revealed. A staggered process by which the tax is due over the next ten years and a statutory transitional provision would be unnecessary. The measure would be significantly less complex, and the administrative expense would not least be reduced for taxpayers and tax authorities as a result.

Further need for clarification arises, however, regarding the question of actual implementation. For example, various methods are available in principle for valuing any hidden reserves. It would probably be difficult to determine from this plurality of methods the valuation method applicable in each case. It is therefore welcomed if the call for valuation in accordance with "generally accepted principles" (see report p. 13) would allow for the plurality of methods. Otherwise, there should in this regard − i.e. when selecting the valuation method − be as much legislative leeway as possible to ensure appropriate valuations on a case by case basis. Correction mechanisms should also be provided for in the case of over- or undervaluation.

f. Abolition of issuance duty on equity

The issuance duty on equity is a harmful substance tax that burdens corporate finance and is not levied in this form in barely any other country. The abolition of issuance duty on equity is welcome news as this would strengthen Switzerland's appeal as an investment location.

Swiss-Amcham sees the possibility, however, of waiving this measure, if need be, should the acceptance of the entire reform package be at risk due to uncertainty with regard to the question of financing.

g. Adjustments with regard to loss offsetting

The current way of dealing with losses carried forward, according to which these expire unused after seven years, fundamentally violates the principle of taxation according to economic performance. Swiss-Amcham therefore welcomes the introduction of loss offsetting over an unlimited period of time, removing this problem. Consequently, the principle of economic efficiency would probably require that Switzerland also does away with limiting loss offsetting to 80% of the annual net profits (before offsetting losses), which is why this limitation must be rejected.

The introduction of what is known as the "Marks & Spencer" regime, according to which expired tax losses of corporation companies could be utilised by the parent company for offsetting leads – at least in the case of Swiss "parent companies" – to a further strengthening of the principle of taxation in accordance with economic performance. It must therefore also be welcomed. In connection with the planned introduction of direct participation deduction, the measure would certainly be indispensable. Without the ability of Swiss and foreign subsidiaries to offset expired losses carried forward, capital losses would no longer be deductible in the new system, which would clearly worsen the situation.

However, it is stated in the explanatory report that these measures do not contribute to maintaining or strengthening the appeal of Switzerland and the urgent quest to find a solution to the issue of the CTR III. With a view to focusing on the reform goals, Swiss-Amcham is therefore in favour of including all these measures separately on the agenda at another time.

All the more so as the solution proposed for corporation companies would probably be associated with significant implementation problems, especially when it comes to determining foreign losses under Swiss law. Experience with similar regulations in countries outside Switzerland shows that the absorption of losses of corporation companies, especially in international cases, leads to numerous disputes over the amount of losses that can be offset. Therefore, some countries are already turning away from corresponding regulations or limiting them. Given this, there is no reason why Switzerland should introduce such regulations.

h. Adjustments with regard to participation deduction

In principle, Swiss-Amcham supports the proposed extension of the participation deduction to free float shares and the abolition of holding period requirements with regard to capital gains (except banks). This removes one hurdle, for which there is no proper justification. The purpose of the participation deduction to avoid economic multiple taxation in corporations must be achieved regardless of the minimum participation quota or value and holding period.

We also support the proposed new method of calculating the exempted net investment income. According to this, financing and administrative expenses are no longer to be proportionately deducted from investment income, but fully tax-effective at the expense of the remaining operating income. This would remove the residual taxation in connection with investment income. In contrast to the current regulation, the exemption would be implemented with consistency and better consideration would therefore be given to the aim of avoiding economic multiple taxation.

The core element of the law change involves replacing the indirect exemption of investment income and profits (discount in term of tax amount) with their direct exemption (discount in terms of the tax base, i.e. net profit). A consequence of what is known as the box solution for investments is that no “cross-box” loss offsetting can take place. This means in particular that operating losses (annual and prior year losses) cannot be offset against investment income, but also that investment losses would no longer be considered in a way that is tax effective. Furthermore, the tax-effective deductibility of write-downs/depreciation on investments from operating profit would be dropped; losing this immediately effective measure would mean Switzerland loses an advantage. In contrast, revaluation gains due to investments recovering in value/reversal of depreciation should no longer form taxable income according to the draft, which may, if need be, outweigh the disadvantage mentioned. In principle, it can be assumed that the box solution leads to favourable administrative simplifications.

However, the measure is mainly justified by the objective of improving the tax system. In view of the complexity and importance of the consultation draft, Swiss-Amcham also recommends doing away with this measure with a view to focusing on the reform objectives, especially as it is likely to be accompanied by significant revenue shortfalls. Improvements in the tax system must be discussed as needed, separate from this consultation draft.

i. Introduction of a capital gains tax on securities

Swiss-Amcham deems it inexpedient and in no way relevant to want to introduce an advanced taxation of individuals through the corporate tax reform and in turn provoke a discussion on principles regarding the taxation of private persons (especially regarding capital gains tax plus wealth tax). Especially because what is known as investment profit tax (see BBl 1983 III 1, 35 ff. and 177 ff.) failed to clear the hurdle of the Federal Assembly when deliberating over the DBG and StHG in 1990 and the popular initiative "for a capital gains tax" was clearly rejected in 2001 by two-thirds of the people and all cantons.[2] To avoid jeopardizing the reform as a whole and for the reasons stated below, we strongly recommend not introducing a capital gains tax.

In addition, the introduction of a capital gains tax is neither mandatory nor adequate to finance the CTR III. If − as advocated by Swiss-Amcham − the proposed measures to "improve the tax system" (adjustments with regard to loss offsetting, participation deduction, as well as the partial taxation procedure) are done away with, the extra revenue from capital gains tax will not be needed. Furthermore, tax revenue from a capital gains tax is by nature extremely volatile and uncertain. The extra revenue estimated in the explanatory report to be a total of over CHF 1 billion (federal and cantonal taxes) appears to be barely in reach based on a sound forecast. For these reasons, capital gains tax is not suitable as a tool to finance the CTR III.

Furthermore, capital gains tax is at odds with the aims of the CTR III because it makes Switzerland less appealing.

As justification, the explanatory report says that taxation gaps with regard to private capital gains existing in today's legislation must be closed. In fact, the proposal would impair the tax system. Compared to other – still tax-free – capital gains, the proposed unequal treatment appears questionable. Furthermore, fully retaining taxation of securities dealers (Article 18b para. 2 of the DBG) who hold securities for less than one year appears incoherent, while the holding period requirements for both the participation deduction (for corporations and cooperatives) and for the partial taxation of capital gains and asset income from investments (for individuals) is to be dropped. Above all, the limitation of loss offsetting to the "participation box" contradicts the principle of taxation according to economic performance, which is based on the total income.

[2] <http://www.parlament.ch/d/suche/seiten/legislaturrueckblick.aspx?rb_id=20000087>.

Another point of criticism centers on the considerable effort that arises even for taxpayers who have only one security. The certification and accounting obligations imposed by the tax law are impractical for individuals, and the resulting inspection effort for authorities appears disproportionate. The proposed system of production costs (Gestehungskostensystematik) is clearly underdeveloped (for example, it is unclear what production cost value would be significant in the event of companies relocating to Switzerland) and replaces - without good reason - the previously existing principle based on nominal value and capital contribution (Nennwert- und Kapitaleinlageprinzip).

j. Adjustments with regard to the partial taxation procedure

The partial taxation procedure is used to minimize economic double taxation. The explanatory report argues that the profit tax has tended to decrease in recent years and will probably continue to decline over the course of the CTR III, leading to overcompensation in some cantons.

The counter-argument on the one hand is that no profit tax cuts are under discussion at a federal level. Accordingly, there is also no reason to further limit partial taxation.

On the other hand, the cantons are free to specifically consider past or future profit tax cuts through adjustment in the modalities of partial taxation in a way that meets their needs. There is in this regard clearly neither a need for vertical nor horizontal harmonization which should be addressed as part of the CTR III.

Moreover, significant revenue losses would be expected by giving up the minimum participation quota. Since the measure does not increase the appeal of corporate taxation, as recognized in the explanatory report, Swiss-Amcham recommends doing away with this in the CTR III package.

k. Additional adjustments

The proposed adjustments of draft Art. 20 V of the DBG (capital reserves must be shown in the balance of trade) and draft Art. 61a III of the DBG (taxation of corporate transfers) are not necessary to achieve the reform goals. They only make the consultation draft open to attack and should therefore be omitted.

3. What other fiscal measures do you suggest?

Call for the introduction of a fiscal input incentive for R&D&I

To secure Switzerland's place as an important location of R&D&I in terms of international fiscal competition, we also call for the introduction of an input incentive (multiple deduction of expenditure on R&D&I) as part of an integrated R&D&I strategy in addition to the measures proposed in the consultation draft).

As Switzerland is too small as a production location for mass products and as it does not have any raw materials, it can only be successful if it develops innovative products, processes and technologies. This is undoubtedly the key prerequisite for generating economic growth, creating work and ensuring Switzerland's prosperity. R&D&I activities are therefore in part a public good and should be promoted by the state to the extent necessary and possible where the private sector has reached its (financial) limits. As innovative sectors with the corresponding resources generate above-average economic income, it can only make sense to guide resources through state intervention where they achieve the highest income for the economy as a whole. The targeted promotion of innovation therefore makes economic sense, as shown by a study by KPMG in collaboration with the Swiss-American Chamber of Commerce and the University of St-Gallen[3].

Many developed economies therefore rely successfully on state support for innovation activities.[4] A look abroad shows that tax incentives are an essential tool for a forward-looking economic policy and policy for attracting inward investment. The majority of OECD countries currently support R&D&I with a targeted approach using tax incentives. As part of the Europe 2020 strategy, the EU specifically proposes that its Member States create fiscal and other financial incentives for the private sector.

Taking into account the international environment and the above-mentioned study, we propose the following model for input incentives for R&D&I in Switzerland:

- Increased deductibility of ongoing R&D&I costs from the tax basis with regard to direct federal tax and cantonal and municipal taxes
  - Increased deduction rate of 170% for R&D&I costs up to CHF 10 million
  - Increased deduction rate of 130% for the excess amount
  - Possible flexibility in determining the deduction rate at the cantonal level
- Ability to carry forward tax for R&D&I costs over an unlimited period of time that cannot be used in full as a result of a tax basis that is too low in the year it arose
- A definition of qualifying R&D&I costs that is as broad as possible
- Examination of the qualifying R&D&I costs for the purposes of direct federal tax and cantonal and municipal tax by a central body independent of the tax authorities. A categorization of costs confirmed by that body as R&D&I expenses (fees may apply) would then be binding for the calculation of federal tax as well as for the individual

[3] KPMG/Amcham-Studie "Steuerliche Förderung von F&E in der Schweiz", 2011; http://www.amcham.ch/publications/downloads/20110824_kpmg_amcham_study_ge.pdf.
[4] EY „Worldwide R&D incentives reference guide", 2014; http://www.ey.com/Publication/vwLUAssets/EY-RD-incentives-reference-guide-2014/$FILE/ey-RD-incentives-reference-guide-2014.pdf

cantonal tax authorities.

- Access to tax advantages should not be hampered by unnecessary administrative hurdles; a transparent and practical model is a prerequisite for successful implementation
- The proposed model should be combined with introduction of a fiscal "output" incentive regarding income from intangible assets to guarantee integral innovation support (see point 2b above).

If an output model is introduced only at the cantonal level, we recommend introducing the input model as mandatory at least at the federal level and at the same time, through the StHG, granting the cantons the right of planning its introduction also for cantonal taxes.

As shown in countries outside Switzerland, tax incentives can be implemented relatively easily and without too much bureaucracy. Fears that they would make the Swiss tax system more complicated are unfounded. The issue of defining qualifying R&D&I expenses must be solved through policy. Switzerland would be well advised to define the term as broadly as possible to achieve the maximum economic advantage.

In view of the dynamic environment in the international tax landscape, the ability of Switzerland to react quickly and efficiently will be a key success factor. For this reason, we propose a body comprising representatives from industry, advisors and representatives from the tax administration to guide and support the future development of R&D&I support.

4. Do you agree to federal government giving the cantons fiscal leeway? Do you agree with the proposed vertical equalisation measures (extent and nature of equalisation (para. 1.2.4 of the notes)? Do you think an alternative distribution mechanism would be conceivable in which the vertical equalisation payments are graded dependent on the profit tax burden of the canton?

Given the significant extent to which the federal government benefits from business activities of international companies in Switzerland, a substantial contribution from the federal government to the reform measures is warranted. The proposal to increase the cantonal proportion to direct federal tax appears both to give suitable consideration to both the goal of focusing on requirements and that of ensuring neutrality in cantonal tax competition. The supplementary contribution facilitates political suitability among the cantons. Additional support for cantons with a large contribution to the Federal Treasury and cantonal fiscal equalization must urgently be provided for (see question 1b above).

5. Do you agree to resources equalization being adjusted to the new fiscal environment? Do you support the adjustment described in the report of resource equalisation and the proposed supplementary contribution for cantons with few resources (para. 1.2.5 of the notes)?

The abolition of cantonal status companies forces an adjustment of resource equalization. The proposed lower weighting of corporate profits is purposeful and well-founded faced with reduced ability to use corporate profit from a tax perspective.

6. Do you agree with the concept submitted by the Federal Council for financing at the federal level (para. 1.2.6 of the notes)? What other measures do you suggest to compensate the reform burdens?

From the perspective of Swiss-Amcham, financing should take place by using structural surpluses. The long implementation period of the reform allows the fiscal course to be set to allow the necessary surpluses to be built up in time. International companies are important drivers of profit tax and largely responsible for the strong growth of this tax in the past as well as in the coming years. A strong, competitive tax location is a prerequisite for this development and also the main objective of the CTR III. The use of structural surpluses (to be built up) for this goal is therefore justified and the right solution.

The well-established, if not strengthened appeal of Switzerland, has already had a dynamic effect, which has also benefited the public budget in particular.

If certain tax system adjustments associated with revenue shortfalls are removed from the package (adjustments with regard to investment profit tax and loss offsetting, as well as the partial taxation procedure), capital gains tax is unnecessary as a financing instrument at the federal level. The extent of the necessary financing would also be greatly reduced at the cantonal level.