Universität Zürich[UZH]

Institute of Law

Introduction to Swiss Tax Law

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Fiscal Sovereignty in Switzerland: 3 Levels of Taxation

- Confederation

  Authority in all areas in which it is empowered by the Federal Constitution → the Confederation is only allowed to levy taxes to which it is authorised by the Federal Constitution

- Cantons (26 Cantons)

  Authority in all areas that are not reserved to the Confederation → the cantons are authorised to levy any type of tax as long as they do not infringe upon the exclusive authority of the Confederation or upon the Federal Constitution and Federal Law

- Municipalities (approx. 2’200 Municipalities)

  Authority in all areas that are entrusted to them by the Canton → the municipalities are only allowed to levy taxes within the limits of the respective cantonal constitution and laws

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Main Taxes at the federal level

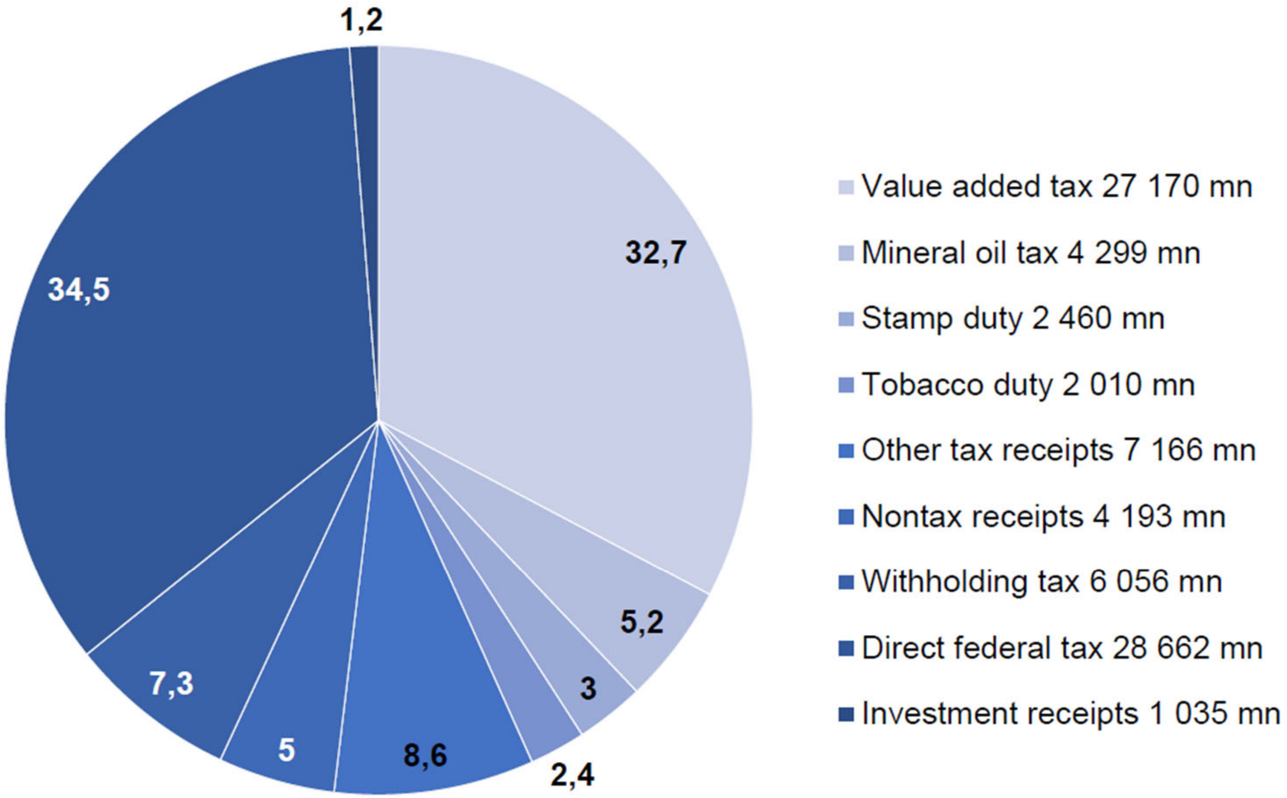
Taxes on income

- Income tax (individuals)
- Tax on net profit (legal entities)
- Withholding tax on certain items of income of certain taxpayers (e.g. salary income of short term residents without Swiss citizen-ship and of non-residents)
- Withholding (Anticipatory) tax on certain types of of income on movable capital assets

Taxes on goods and services

- Value Added Tax
- Stamp duties
- Tobacco tax
- Beer tax and tax on distilled spirits
- Mineral oil tax
- Motor vehicle tax
- Customs duties

Federal Revenue: 2024 Ordinary Receipts (Budget)



Source: https://www.efv.admin.ch/efv/en/home/finanzberichterstattung/bundeshaushalt_ueb/einnahmen.html

Main Taxes at the cantonal and/or municipal level

Taxes on income and on net wealth

All cantons

- Income and net wealth tax (individuals)
- Tax on net profit and on capital (legal entities)
- Real estate capital gains tax
- Withholding tax on certain items of income for certain taxpayers

Not all cantons

- Inheritance and gift tax
- Lottery income tax
- Real estate tax

Taxes on goods and services

Not all cantons

- Taxes on transfer of immovable property
- Motor vehicle tax
- Stamp duties
- Dog tax
- Entertainment tax
- Visitor's tax (or Tourist Tax)

Main International Agreements

- **Double Taxation Treaties:** Wide net of double taxation treaties concluded by Switzerland (more than 100 treaties on income taxes, some of them including net wealth taxes, 8 treaties on inheritance taxes)
- **Bilateral Agreements with the European Union; relevant from a tax perspective are in particular:**
  - Bilateral Agreement on the free movement of persons (AFMP)
  - Agreement on Automatic Exchange of Information, in force since 1 January, **2017** (replaced former agreement on taxation of savings income)
- **Multilateral Convention on Mutual Administrative Assistance in Tax Matters (in force as of 1 January, 2017)**: Obligation to grant exchange of information on request, automatically and spontaneously
- **Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (in force as of 1 December, 2019)**: Amendment of the double taxation treaties based on the BEPS project containing a minimal standard and optional provisions

Most relevant Federal Tax Acts

- Federal Act on the Federal Direct Tax (FDTA) of 14 December, 1990 (Bundesgesetz über die direkte Bundessteuer [DBG], SR 642.11)
  - Individual income tax
  - Corporate net-profit tax
- Federal Act on the Harmonisation of Direct Taxes of Cantons and Municipalities (FTHA) of 14 December, 1990 (Bundesgesetz über die Harmonisierung der direkten Steuern der Kantone und Gemeinden [StHG], SR 642.14)
  - Federal binding guidelines on the cantonal taxes on income and net-wealth, net-profit and capital as well as on real estate capital gains
- Federal Withholding [Anticipatory] Tax Act of 13 October, 1965 (Bundesgesetz über die Verrechnungssteuer [VStG], SR 642.21)
- Federal Stamp Duties Act of 27 June 1973 (Bundesgesetz über die Stempelabgaben [StG], SR 641.10)
- Federal Value Added Tax Act of June 12, 2009 (Bundesgesetz über die Mehrwertsteuer [MWStG], SR 641.20)

Constitutional Principles of Taxation (I)

Art. 127 Federal Constitution of the Swiss Confederation

1 *The main structural features of any tax, in particular those liable to pay tax, the object of the tax and its assessment, are regulated by law.*

2 *Provided the nature of the tax permits it, the principles of universality and uniformity of taxation as well as the principle of taxation according to ability to pay are applied.*

3 *Intercantonal double taxation is prohibited. The Confederation shall take the measures required.*

Constitutional Principles of Taxation (II)

- Principle of universality
  - Prohibition of a privileged treatment of certain taxpayers or group of taxpayers
  - Prohibition of discrimination and of more burdensome taxation of certain taxpayers or group of taxpayers
- Principle of equality and ability-to-pay principle
  - Each taxpayer must contribute to the fiscal revenue of the state according to his/her economic and personal resources
  - Horizontal equality: taxpayers who are in the same economic and personal situations and derive the same amount of taxable income must be taxed identically
  - Vertical equality: taxpayers who are in different economic and personal situations and derive a different amount of taxable income must be taxed differently

Constitutional Principles of Taxation (III)

- Ability-to-pay principle: Examples of ongoing discussions in Switzerland (I)
  - Equal treatment of married couples and cohabiting couples ("*Heiratsstrafe"*)
    - Married couples are taxed together (family taxation; article 9 and 36 FDTA); cohabiting partners are taxed separately (single taxation), the progressive income tax rates may lead to a higher tax burden of married couples compared to cohabiting partners (calculations show that approx. 450’000 married couples are actually concerned)
    - Equal treatment is more or less solved with regard to the cantonal income taxes, but not with regard to the federal income tax
    - For years, different solutions are discussed in the Swiss Parliament in order to solve the inequality; two popular initiatives are currently pending proposing different solutions
    - Current standing: On 30 August 2023, based on public consultations, the Federal Council («Bundesrat») published the benchmarks for a shift to individual taxation of spouses; a dispatch and draft legislation will be prepared and presented to the Parliament in March 2024.

Constitutional Principles of Taxation (IV)

- Ability-to-pay principle: Examples of ongoing discussions in Switzerland (II)
  - Exemption of capital gains on private assets from the taxable income tax base: article 16 (3) FDTA
  - Lump-sum taxation of non-Swiss citizens who do not work in Switzerland: article 14 FDTA

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Prohibition of Intercantonal Double Taxation (I)

- Prohibition of intercantonal double taxation: actual and potential double taxation
- Principle of non-discrimination:
  - a taxpayer who is only taxable in a canton with a part of his income shall not be treated differently from a taxpayer who is taxable with all of his income in that canton
  - Applicable for both the canton of residence and the canton of source

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Prohibition of Intercantonal Double Taxation (II)

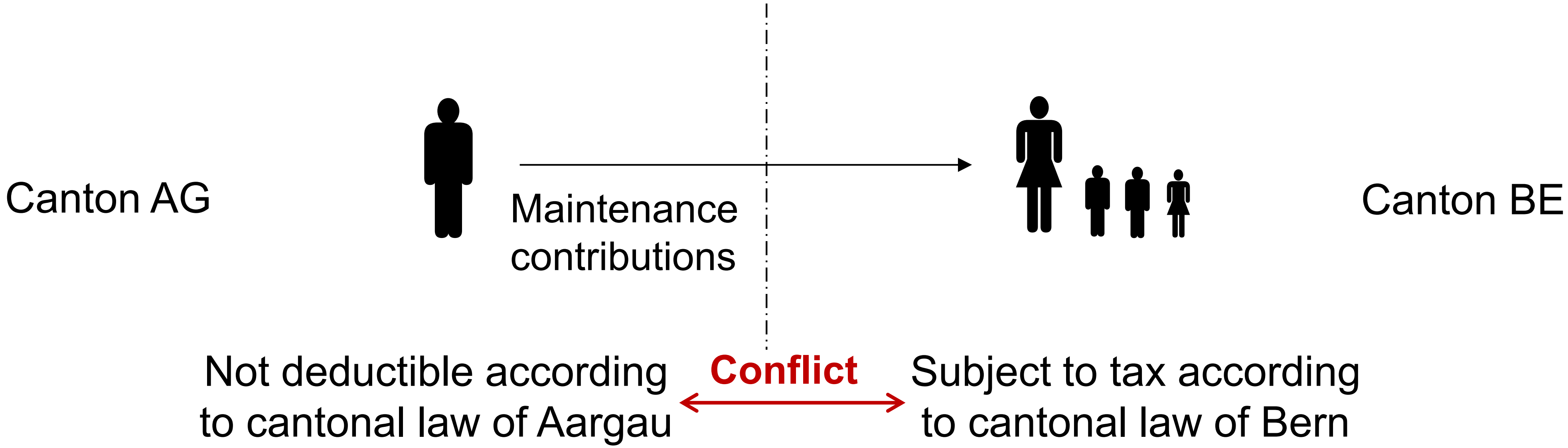
- Main allocation rules
  - ➢ Immovable property may only be taxed by the canton where the property is situated

    For example: A. living in Zurich owns a real estate in Davos:

    - The Canton of Graubünden is allowed to tax the net income derived from the real estate whereas the Canton Zurich must exempt that income
    - Both cantons are however allowed to take into account A.'s entire income for calculating the applicable tax rate (exemption with progression)
  - ➢ A permanent establishment or an enterprise (carried out by a sole proprietor or a partnership) may only be taxed by the canton where the permanent establishment or enterprise is situated
  - ➢ All other kinds of income may only be taxed by the canton where the taxpayer is a resident of (including income from employment and income from movable assets)

Prohibition of Intercantonal Double Taxation - Example: Federal Supreme Court 4 Dec. 1992, ATF 118a I 277

Divorced couple, payment of maintenance contributions from one canton to another



The Federal Supreme Court ruled that the Canton of Aargau must deduct the maintenance contributions and the Canton of Bern is allowed to tax them

Harmonisation of Direct Taxes (I)

Art. 129 Federal Constitution of the Swiss Confederation

1 The Confederation shall set out principles on the harmonisation of the direct taxes imposed by the Confederation, the Cantons and the communes; it shall take account of the efforts towards harmonisation made by the Cantons.

2 Harmonisation shall extend to tax liability, the object of the tax and the tax period, procedural law and the law relating to tax offences. Matters excluded from harmonisation shall include in particular tax scales, tax rates and tax allowances.

3 The Confederation may issue regulations to prevent unjustified tax benefits.

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Harmonisation of Direct Taxes (II)

1 January 2001:
Federal Tax Harmonisation Act (FTHA) took effect

Coordination only based on constitutional principles: cantonal tax law differed considerably

- Prohibition of intercantonal double taxation
- Principle of equality
- Ability-to-pay principle

Coordination based on the FTHA

- Harmonisation of tax subject, tax object, tax period, tax procedure, tax penal law
- Harmonisation both at the horizontal and vertical level
- No harmonisation of tax allowances and tax rates

Harmonisation of Direct Taxes (III)

No harmonisation of tax allowances and tax rates → the tax rates of the cantons and municipalities differ considerably

Example 1: Assumption: single person, taxable income CHF 100’000 (Option 1) or CHF 300’000 (Option 2); tax year 2023

Taxable income	**CHF 100’000**	**CHF 300’000**
Federal income tax: (maximum tax rate: 11.5 %)	2.80 %	8.84 %
Cantonal income tax (incl. municipal income tax)		
• Lowest: Wollerau[1] (Canton Schwyz)	6.45 %	8.01 %
• Highest: Lausanne (Canton Waadt)	20.49 %	28.52 %
• Zurich (City of Zurich)	13.75 %	21.39 %

[1] Among others

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Harmonisation of Direct Taxes (IV)

Example 2: Assumption: Corporation with a taxable profit of CHF 1’000’000; statutory tax rates 2023

Federal corporate tax	8.5 %
Cantonal corporate tax (incl. municipal and parish tax)	
• Zug (lowest)	4.9 %
• Bern (highest)	17.8 %
• Zurich	16.0 %

It should be noted that the effective tax rates are lower than the statutory tax rates mentioned above since Swiss corporate tax law allows the deduction of paid taxes (effective tax rate federal corporate tax minus approx. 1 %, effective tax rates cantonal corporate tax minus approx. 1 - 4% depending on the individual situation)

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Federal Income Tax

Legal basis: Federal Act on the Federal Direct Tax (FDTA) of December 14, 1990 (Bundesgesetz über die direkte Bundessteuer [DBG], SR 642.11)

- Federal income tax on the income of individuals
- Federal corporate tax on the net profit of legal entities
- Source Tax levied on the income of certain individuals and legal entities

Federal Individual Income Tax (I)

Subjects to the Federal Individual Income Tax – Two categories of taxpayers (I)

- Taxpayers with **personal** attachment → Swiss residents → **unlimited** tax liability («world-wide income tax principle»), 2 forms of attachment:
  - ➢ Swiss residence (art. 3 (1) FDTA): central place of living is in Switzerland
  - ➢ Abode of at least 30 days (with gainful activity) or 90 days (without gainful activity) in Switzerland (art. 3 (3) FDTA)

- Exception from the world-wide income tax principle: enterprises, permanent establishments and real estate situated abroad are unilaterally exempt from income taxes (article 6 (1) FDTA)

  → Unilateral exemption method with progression (article 7 (1) FDTA)

  → Exemption even if no double taxation treaty applies

Federal Individual Income Tax (II)

Subjects to the Federal Individual Income Tax – Two categories of taxpayers (II)

- Taxpayers with **economic** attachment → non-residents → **limited** tax liability («source principle») (art. 4 and 5 FDTA): several attachments:
  - real estate in Switzerland
  - permanent establishment in Switzerland
  - gainful activity without temporary abode
  - board members or directors of Swiss corporations
  - pensions and similar remunerations paid by Swiss institutions/insurances
- Taxation of the Swiss source income
- Ordinary tax assessment or source tax, e.g. salary source tax for any dependent work in Switzerland or for sportspersons and artists

Federal Individual Income Tax (III)

Example

Susanne, not married, no children, is a biologist working for a UK based pharmaceutical group. In view of the implementation of a specific project, she moves to Switzerland for 7 months and works for the Swiss subsidiary of the group that is based in Zurich. Her monthly gross salary amounts to CHF 8'000.

Is Susanne liable to tax in Switzerland?

Solution

- Susanne is subject to federal, cantonal and communal income taxes.
- She is subject to source taxation; her employer directly deducts the due income taxes from her monthly gross salary.
- The due tax is calculated based on a kind of lump-sum tax rate that includes any deductions and allowances and depends on the monthly gross salary.
- For Susanne, the total income tax rate amounts to 9.52% (federal, cantonal and communal taxes, tax year 2023)

Federal Individual Income Tax (IV)

Taxable income

Principle of taxation of the overall income (no baskets, no schedules):

- General clause (art. 16 (1) FDTA): «All recurring and non-recurring income is subject to income tax.»
- Non-exhaustive enumeration:
  - income from dependent and independent services (incl. compensatory income)
  - income from movable and immovable property
  - income from insurances and seniority allowances

Exceptions

- Capital gains on movable and immovable assets if not realised on business assets, e.g. realised on private assets (art. 16 (3) FDTA)
- Inheritance and gifts (= subject of cantonal gift and inheritance tax); some kind of insurances payments; financial aids for low-income people (art. 24 FDTA)

Federal Individual Income Tax (V)

Deductible Expenses and Allowances

- All expenses related to the earning of income, e.g. professional expenses; expenses for the maintenance of immovable property; expenses for the administration of securities, etc.
- Interest payments, particularly mortgage interest payments
- Payments to company pension plans; insurance fees (partly)
- Allowances for children, dependents and double-income couples

Federal Individual Income Tax (VI)

Deductible Expenses: Example of work-related expenses (Art. 26 FDTA)

Peter lives in Bern and works in Zurich. He commutes by train from Bern to Zurich. He is a young attorney-at-law and decides to attend an English evening course in order to improve his chances to work for an international law firm.

Peter may deduct from his taxable income:

- Train costs (effective costs up to an amount of CHF 3'200 per year)
- Costs of taking lunch out of home (lump-sum amount of CHF 15 per day, total per year CHF 3'200): costs for meals can be deducted if it is not reasonable for the taxpayer to go home for lunch
- Costs of the language course as costs of further education: educational costs are deductible if they are directly connected to the current profession of the taxpayer

Federal Corporate Income Tax (I)

Types of legal entities – Two categories

- Corporations: Share Company (AG/SA), Limited Liability Company (GmbH/Sarl), Cooperative Society
- Other legal entities: Association, foundation and other entities that are treated as legal entities, e.g. investment trusts with direct real estate ownership
- Not partnerships: in Switzerland partnerships are not considered legal entities; their income is attributed to the partners (transparent taxation)
- Exception: Foreign partnerships with limited tax liability in Switzerland (e.g. because of a real estate or a PE) are taxed according to the provisions applying for legal entities

Federal Corporate Income Tax (II)

Subjects to the Federal Corporate Tax – Two Categories of taxpayers

- Taxpayer with **personal** attachment → Swiss residents → **unlimited** tax liability (art. 50 FDTA); except of enterprises, permanent establishment and real estate abroad (Art. 52 (I) FDTA)
  - Registered office (statutory seat)
  - Place of effective management
- Taxpayer with **economic** attachment → non-residents → **limited** tax liability (art. 51 FDTA)
  - real estate in Switzerland
  - permanent establishment and enterprises (carried out by sole proprietor or partnership) in Switzerland

Federal Corporate Income Tax (III)

Determination of the taxable profit

- In principle, the financial statement is authoritative for corporate tax purposes provided that the financial statement corresponds with the Swiss accounting rules
- Adjustments of the financial statement for corporate tax purposes are only allowed if expressly stated in tax law, e.g.
  - constructive dividends to a shareholder or an affiliated person
  - commercially unjustified expenses or depreciations
  - earnings not entered into the financial statement

Tax Reform of 2019 (in force since 1 January 2020) (I)

- For many years, Switzerland was under pressure by the EU and the OECD to abolish several criticised tax regimes (e.g. regimes for holding, administrative and mixed companies; finance branches); these regimes were abolished as per 31 December 2019
- As per 1 January 2020, Switzerland introduced measures that are in line with EU law and the OECD project on Base Erosion and Profit Shifting (BEPS), combined with a considerable reduction of the cantonal corporate tax rates in most of the cantons

Tax Reform of 2019 (in force since 1 January 2020)

Most amendments concern the cantonal individual (for self-employed taxpayers) and corporate income taxes, some are mandatory, some are optional:

- Patent box (mandatory)
  - Only open for registered patents and some similar rights, not for software
  - Cantons are obliged to introduce a patent box, are however free to decide on the amount of relief, deduction of the qualified taxable income of up to 90% possible
  - Calculations of the qualified income follows the OECD BEPS Report Action 5
- Super-deduction of research and development expenses
  - Costs for research and development may be deducted up to 150% of the effective amount
  - Cantons are free to introduce the super-deduction
- Notional interest deduction on the excessive part of the equity capital (optional and only available under certain requirements; at the moment only fulfilled by the Canton of Zurich)

Implementation of the Global Minimum Tax in Switzerland (Pillar Two of the OECD/G20 Project) (I)

Concept of the Global Minimum Tax

- The OECD's Pillar 2 Project recommends to introduce a minimum tax rate of 15% for multinational groups with annual turnover of at least EUR 750 million.
- If a company belonging to such a group is not subject to a minimum tax of 15% in its resident state, the resident state of the ultimate parent company is allowed to levy a top-up tax on the difference between the effective tax burden and the required minimum tax (so-called **Income Inclusion Rule** or primary rule).
- If the primary rule is not applied by the resident state of the ultimate parent company, the resident states of other group companies are allowed to levy an additional tax to secure the minimum taxation of all group companies (subordinate rule, so-called **Undertaxed Payments Rule**).
- Both rules, the Income Inclusion Rule and the Undertaxed Payments Rule can be avoided, if a state is levying a so-called **Qualified Domestic Top Up Tax** and by that secures that the minimum tax of 15% is levied from all companies in that state belonging to a group with an annual turnover of at least EUR 750.
- To ensure that the taxable profits of the companies concerned are comparable, the OECD has developed so-called **Model Rules** that the states must observe.

Implementation of the Global Minimum Tax in Switzerland (Pillar Two of the OECD/G20 Project) (II)

Implementation of the Minimum Tax in Switzerland

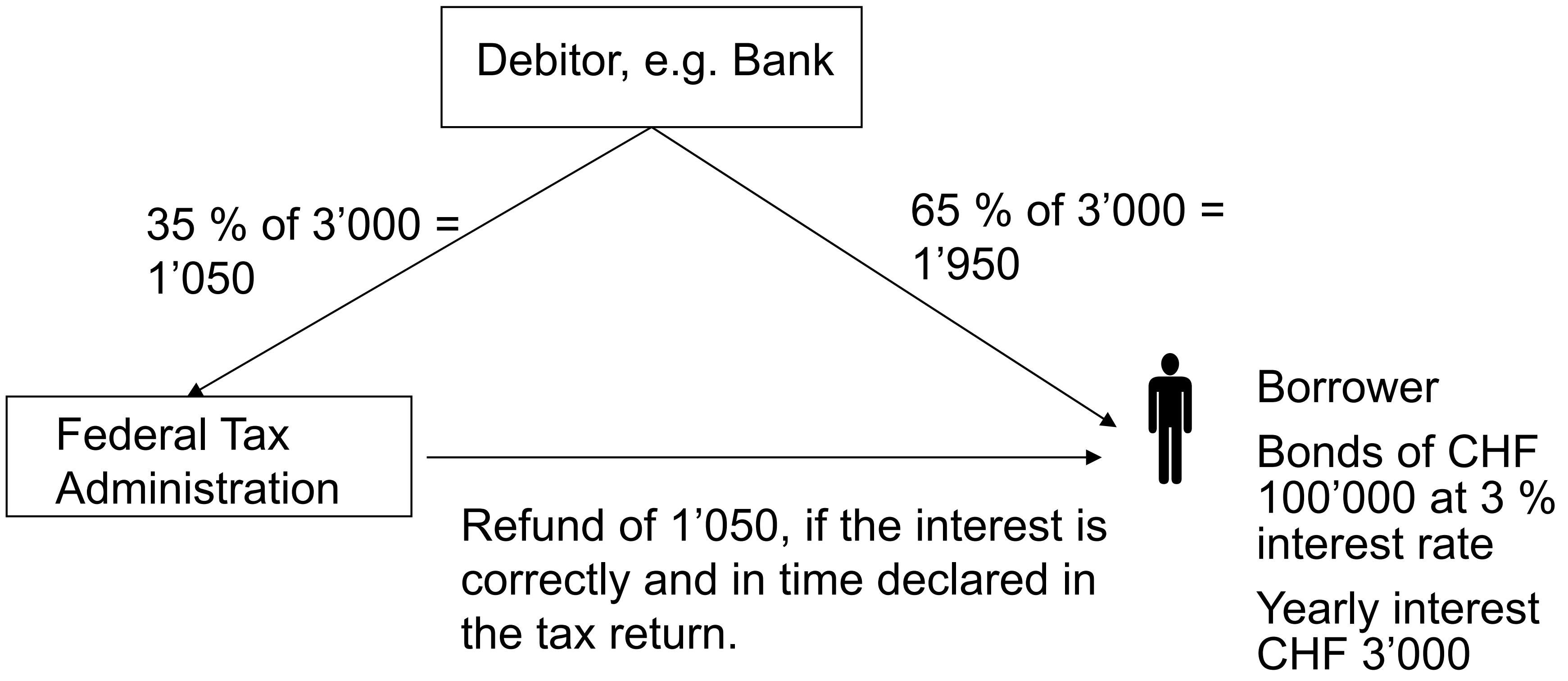
- In Switzerland, in many cantons the overall tax burden of companies (federal, cantonal and communal corporate income taxes) is below 15%, hence, Switzerland must react to avoid that other states apply the Income Inclusion Rule or the Undertaxed Payments Rule.
- The Swiss people approved a new legislation on minimum taxation in June 2023. Switzerland will introduce a Qualified Domestic Top Up Tax, levied from any Swiss company belonging to a multinational group with an annual turnover of EUR 750 million that is not taxed at the minimum level of 15%,
- Besides that Switzerland will also introduce the Income Inclusion Rule and the Untertaxed Payments Rule.
- The new legislation will most likely enter in force on 1 January 2024, however, not yet finally decided.

Withholding (Anticipatory) Tax (I)

- Legal basis: Withholding Tax Act of October 13, 1965 (Bundesgesetz über die Verrechnungssteuer [VStG], SR 642.21)
- Tax Rate on dividends and interest: 35 %
- Tax objects: dividends distributed by Swiss companies to Swiss and foreign shareholders; interest paid by Swiss residents on savings accounts, debentures and bonds
- Requirements for a full or partial refund of the withholding tax:
  - Swiss residents: if they correctly and timely fill in their tax returns
    → full refund
  - Swiss non-residents: if they are entitled to a double taxation treaty or if article 15 of the Agreement on Taxation of Savings Income between Switzerland and the EU applies
    → full or partial refund according to the tax treaty or the Agreement

Withholding (Anticipatory) Tax (II)

Concept of the Swiss Withholding Tax on Dividends and Interests



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Stamp Tax

- Legal basis: Stamp Tax Act of June 27, 1973 (Bundesgesetz über die Stempelabgaben [StG], SR 641.10)
- Three kinds of stamp taxes
  - ➢ Stamp tax on the issuance of shares in Swiss corporations
  - ➢ Stamp tax on the transfer of domestic and foreign securities
  - ➢ Stamp tax on insurance premiums
- Tax rate on the issuance of shares: 1 %
- Tax rate on the transfer of securities:
  - ➢ 0.15% (for securities issued by a Swiss tax resident)
  - ➢ 0.3% (for securities issued by a foreign tax resident)
- Tax exemption in the case of reorganization, e.g. spin-offs, mergers, change of the legal structure, etc.

Value Added Tax (VAT)

- Legal basis: Value Added Tax Act of June 12, 2009 (Bundesgesetz über die Mehrwertsteuer [MWStG], SR 641.20)
- Consumption tax mainly following the principles of the EU directive on VAT levied on all phases of production and distribution as well as on the import of goods, domestic service industry and the import of services from abroad
- Tax rates 2023 (increased rates from 2014)
  - ➢ Standard tax rate 7.7% (2024: 8.1%)
  - ➢ Reduced tax rate on certain categories of goods, e.g. food, medicine, books 2.5% (2024: 2.6%)
  - ➢ Special tax rate for hotel and lodging industry 3.7% (2024: 3.8%)
  - ➢ On-going parliamentary discussion: simplification of the VAT, e.g. only two tax rates instead of three, abolishment of certain exemptions, etc.

Inheritance and Gift Tax (Cantons)

- Taxpayer: Beneficiary of the inheritance or gift
- Assessment basis: market value of the assets (reduced values for real estate and businesses)
- Spouses are exempt from the inheritance and gift tax in all Cantons
- Descendants are exempt from the inheritance and gift tax in most cantons, except the Cantons Appenzell Innerrhoden, Lucerne (certain communes), Neuchâtel and Vaud
- Tax rates depend on the degree of relatedness of the deceased/donor to the beneficiary and on the amount of the inheritance/gift; maximum tax rate up to 40 % for non-related persons