Section XV
Switzerland

The Swiss report reflects the state of the legislation by 2017. The author however indicates that the *Conférence Suisse des Impôts* issued a document on 4 June 2020 entitled *'Analyse de la déduction supplémentaire des dépenses de recherche et développement selon les art. 10a et 25a de la loi fédérale sur l'harmonisation des impôts directs'*.[166]

		Answers and comments	Technical source (when necessary)
1.	'Research and Development' – Definition		
1.1.	As indicated in Section I (*supra*), should 'research and development' be excluded if there is no particular application or use in view for the economy or the internal market?	There is currently no clear definition of R&D for tax purposes in Switzerland, either at the federal level or at the cantonal level. In the CTR III, this notion had to be defined by the Federal Council in the Ordinance of the Federal Tax Harmonisation Act which was never made public. The currently available information on the new Tax Proposal 17 is silent on this point. Therefore, this notion has not yet been defined.	
1.2.	Should the level of novelty be new 'to the world', 'to the internal market (EU)', 'to the market', or 'to the firm'?	There is currently no clear definition of R&D for tax purposes in Switzerland, either at the federal level or at the cantonal level. In the CTR III, this notion had to be defined by the Federal Council in the Ordinance of the Federal Tax Harmonisation Act which was never made public. The current information on the new Tax Proposal 17 is silent on this point. Therefore, this notion has not yet been defined but must respect the principle of proportionality in particular the ability principle.	See proposals made by Robert Danon in R. Danon, *La constitutionnalité des mesures fiscales proposées par la troisième réforme de l'imposition des entreprises (RIE III)*, Lausanne, 2015, p. 81.
1.3.	Should R&D be limited to the industrial sector, or also include the service industry (banking and insurance, but also humanities)?	This notion has not yet been defined but must respect the principle of access neutrality.	R. Danon, *La constitutionnalité des mesures fiscales proposées par la troisième réforme de l'imposition des entreprises (RIE III)*, Lausanne, 2015, p. 78.

166. Availlable at: https://www.ssk-csi.ch/fileadmin/dokumente/Analysen/analyse_Forschung_Entwicklung_FR_2020.pdf.

1.3.1.	In the latter case, which criteria help to identify the presence of R&D in services activities?	Not yet defined.	
1.3.1.1.	Links with public research laboratories;	Not yet defined.	
1.3.1.2.	Involvement of staff with PhDs or PhD students;	Not yet defined.	
1.3.1.3.	Publication of research findings in scientific journals;	Not yet defined.	
1.3.1.4.	Organisation of scientific conferences;	Not yet defined.	
1.3.1.5.	Involvement in scientific reviews;	Not yet defined.	
1.3.1.6.	Others?		
2.	'COSTS' (FOR RESEARCH AND DEVELOPMENT) – DEFINITION	There is currently no clear definition of R&D expenses in Switzerland, either at the federal level or at the cantonal level. In the CTR III, this notion had to be defined by the Federal Council in the Ordinance of the Federal Tax Harmonisation Act which was never made public. The new Tax Proposal 17 simply provides that the additional super deduction for R&D (50%) shall take more account of personnel costs. Therefore, this notion has to be more precisely defined.	
A.	**Capital expenditure**		
2.1.	**Depreciation allowances**	No particular depreciation allowances in favour of R&D exists in Switzerland.	
a.	*General Principles*	**Draft Art. 9-3** provides: '*In addition to the amounts which are deductible as costs for research and development in accordance with paragraph 2, the taxpayer may also deduct, per tax year, an extra 50% of such costs, with the exception of the cost related to movable tangible fixed assets, that it incurred during that year. To the extent that costs for research and development reach beyond EUR 20 000 000, the taxpayer may deduct 25% of the exceeding amount.*" In addition, the Explanatory Memorandum (**para. 8**) provides: '*R&D costs will be fully expensed in the year incurred (with the exception of immovable property).*' **Draft Art. 10** (Other deductible items) provides: '*A deduction shall be made in respect of the depreciation of fixed assets referred to in Articles 30 to 40. […]*'	

		<u>Draft Art. 12</u> (Non-deductible items) provides: '*By way of derogation from Articles 9 and 10, the following items shall be non-deductible:* [...] *(i) acquisition or construction costs or cost connected with the improvement of fixed assets which are deductible under Articles 10 and 18, except for the cost related to research and development. The costs referred to in point (a) of Article 33(1) and points (a) and (b) of Article 33(2) shall not be treated as costs related to research and development;* [...]' – **<u>For additional context, see Annex</u>**. *Based on your national tax background:*	
2.1.1.	Do you share our understanding that depreciation allowances have to be distinguished depending on the assets concerned, whether they are movable or immovable?	In Switzerland, depreciation allowance depends on the sectors of activity and the assets. Therefore the relevant Federal tax administration guidelines distinguish for instance between 'commercial enterprises', 'entreprises active in the electric sectors', 'entreprises active in the agricultural sector', etc. on the one hand and between 'machine', 'commercial real estate', 'computers', 'intellectual property', etc. on the other hand.	Notice AFC A 1995 – Entreprises électriques; Notice AFC A 1995 – Entreprises commerciales; Notice AFC A 1995 – Téléférique; Notice AFC A 1995 – Navigation; Notice AFC A 2001 – Agriculture/Sylviculture.
2.1.2.	Do you share our understanding that depreciation allowances are not available for movable fixed assets, because they are fully expensed in the year incurred, and not eligible to the super-deduction?	Depreciation allowance for movable fixed assets are authorised in Switzerland but the Swiss lawmaker has not yet decided if they are eligible or not as qualified R&D expenses to the R&D 'super-deduction'.	
2.1.3.	Do you share our understanding that depreciation allowances remain available for immovable [property], because it cannot be fully expensed in the year incurred, and is eligible to the super-deduction?	Depreciation allowance for immovable fixed assets are authorised in Switzerland but the Swiss lawmaker has not yet decided if they are eligible or not as qualified R&D expenses to the R&D 'super-deduction'.	
2.1.4.	What if an asset is used both for research and non-research purposes (such as manufacturing)?	In Switzerland, no distinction exists if an asset is used or not for R&D activities. The lawmaker or the tax administration has not yet edited specific Guidelines permitting to qualify this dual-use assets as eligible R&D expenses or not for the 'super-deduction' purposes.	

2.1.5.	If eligible, which criteria for proportional eligibility if asset used both for R&D and manufacturing purposes (e.g. an equipment used both to manufacture prototypes and serial products)?	Switzerland doesn't have specific allocation rule for this case.	
2.1.6.	What if the asset is 'indirectly' used for R&D purposes?	Currently, the fate of the assets indirectly used for R&D purposes is still undecided.	
2.1.7.	What do you think of the following definition: 'Is considered directly used for R&D purposes an asset permitting, in and of itself, to carry out research programs of the business'?	No definition of asset directly used for R&D purposes exists in current Swiss tax law or practice.	
2.1.8.	Is the production of the following assets an R&D activity? (i) production of prototypes; (ii) construction of a pilot plant / or pilot facilities	Not yet defined.	
2.1.9.	Would you characterise the following assets as, potentially, directly used for R&D activities: (i) Handling devices; (ii) Calculation tools; (iii) Computers; (iv) Machines used to manufacture components of a prototype; (v) Telephones, small office appliances, office furniture?	Not yet defined.	
<u>b.</u>	<u>*Specific Rules*</u>		
(i)	*Intangible Assets*	**<u>Draft Art. 33.1(e)</u>** provides: '*Without prejudice to paragraph 2 and Articles 37 and 38, fixed assets shall be depreciated individually over their useful lives on a straight-line basis. The useful life of a fixed asset shall be determined as follows: [...] (e) fixed intangible assets: the period for which the asset enjoys legal protection or for which the right has been granted or, where that period cannot be determined, 15 years.*'	

		The problem is that not all intangible items (e.g. intellectual property, brand names), meet the definition of an intangible asset. If an item does meet the definition of an intangible asset, expenditure to acquire it or generate it internally should be recognised as an expense when it is incurred. Therefore, *based on your national tax background*:	
2.1.10.	Should we use the European Union Accounting Rule 6 defining intangible asset (i.e. identifiability, control over a resource, and existence of future economic benefits or service potential)?		
2.1.11.	If not, what should be the definition of intangible assets?	Because the Swiss tax law doesn't have a special treatment for Intangible asset, there is currently no clear definition of intangible asset for tax purposes in Switzerland, neither at the federal level nor at the cantonal level.	
2.1.12.	Are intangible fixed assets (including intellectual property (IP)) costs fully expensed in the year incurred and included in the CCTB super-deduction?	The expenses are tax-deductible as long as they are considered to be business-related (*'justifiées par l'usage commercial'*).	Notice AFC A 1995 – Entreprises commerciales
	The inclusion of mere intellectual property costs is not advisable: it may create a bias in favour of patented research compared to that stemming from unpatented technology.		
2.1.13.	Will in practice this provision be limited to patents costs acquired with a view to carry on new experimental research and development?	Not yet defined.	
2.1.14.	What if these patents are (also) used in the manufacturing process?	Not yet defined.	
2.1.15.	Should plant variety rights be treated in the same manner as patents?	Not yet defined.	
2.1.16.	What about outlays incurred to acquire licences or know-how?	Not yet defined.	
(ii)	*Immovable [property]*		
	In any case, not covered by exclusion in Art. 9-3		

	In Austria, building costs and financing expenses related to R&D activity may be taken into account.		
2.1.17.	Should the concept of 'immovable property' (Recital No. 8) be preferred to the one of 'immovable fixed asset' (as opposed to Art. 9.3 CCTB)?	Not yet defined.	
2.1.18.	Would building costs and financing expenses related to the acquisition of immovable [property] be eligible to the super-deduction?	Not yet defined.	
2.1.19.	What is your understanding of Art. 12(i): <u>1st meaning</u>: that costs related to acquisition or construction of new commercial or second-hand commercial or industrial immovable [property] is excluded from the super-deduction? Or <u>2nd meaning</u>: that costs related to acquisition or construction of new commercial or second-hand commercial or industrial immovable [property] is not fully deductible the year incurred but should be depreciated and such depreciation allowances are eligible to the super-deduction?	As we cannot find R&D 'super-deduction' in current Swiss tax law, the interpretation is still open from a Swiss perspective.	
(iii)	*Lease payments*		
2.1.20.	What if equipment is used according to the terms of a leasing-type transaction?	Not yet defined.	
2.1.21.	Are leasing instalments eligible for super-deduction under current wording of Art. 9-3?	As there is no R&D 'super-deduction' in the current Swiss tax law, the interpretation is still open from a Swiss perspective.	

2.1.22.	Should they be?	As there is no R&D 'super-deduction' in the current Swiss tax law, the relevance of this expense as qualified R&D 'super-deduction' expense is still open from a Swiss perspective. So theoretically, we can extend the scope of the R&D qualified expense to R&D 'super deduction' but we have a general limitation to 70% of taxable profit in the Tax Proposal 17.	
(iv)	*Alternative readings*		
2.1.23.	Please feel free to add any alternative readings you may have of relevant CCTB provisions and that has not yet been discussed.		
B.	**Current expenditure**		
2.2.	**R&D staff cost**	For the time being, the only information available about the new outfit of R&D 'super-deduction' Tax Proposal 17 is that the additional super-deduction for R&D (50%) shall take more account of personnel costs. However, at the same time, the overall tax relief of all tax measures shall be limited to only 70% of a business year's corporate income before deduction of previous years' losses carried forward. So if theoretically we can extend the scope of the R&D qualified expense to R&D 'super-deduction', we have however a general limitation to 70% of taxable profit in the Tax Proposal 17.	
a.	*What is meant by R&D staff?*		
2.2.1.	Should eligibility be limited to staff directly-involved in R&D?	Not yet defined.	
2.2.2.	In case the staff participates both in R&D and non R&D activities, should the text allow for proportional eligibility based on time spent (or other criteria)?	Not yet defined.	
2.2.3.	How can researchers or scientists be defined? Should the text use black letter criteria (list diplomas (PhDs), qualifications...) or a more open definition?	Not yet defined.	

2.2.4.	Are research technicians R&D staff?	Not yet defined.	
2.2.5.	What about other employees (not 'official researchers') which still have contributed to a patented invention?	Not yet defined.	
2.2.6.	What about the managers of the business (e.g. running a research program)?	Not yet defined.	
2.2.7.	What about other staff (secretariat, cleaning, etc.)? Can, in the alternative, their compensation be taken into account, proportionally, as other operating R&D expenses (cf. I-3 below)?	Not yet defined.	
b.	*What is meant by R&D staff cost?*		
2.2.8.	Wages, bonuses, benefits in kind?	Not yet defined.	
2.2.9.	Social security contributions (compulsory and/or non-compulsory)?	Not yet defined.	
2.2.10.	Employer's contribution to participation of employees in profits of the enterprise by means of profit-sharing plan, employee share-ownership?	Not yet defined.	
2.2.11.	Can a Member State provide that compensation paid to holders of PhD will count more (e.g. double) for a limited period of time (in order to promote hiring of PhD holders)?	Not yet defined.	
2.3.	**Standardisation expenses**		
	Based on your national tax background:		
2.3.1.	Should expenses related to the establishment of technical standards concerning products of the business be eligible for the super-deduction (e.g. expenses incurred on participation of employees in official meetings of standardisation bodies)?	Not yet defined.	

2.3.2.	If yes, should it still be the case even if these employees are not scientists or research technicians?	Not yet defined.	
2.3.3.	How should these expenses be assessed (e.g. as portion of employee compensation related to the time spent in connection with such meetings)?	Not yet defined.	
2.3.4.	Should expenses related to technical monitoring/ technological watch be taken into account?	Not yet defined.	
2.4.	**Patent related expenses**		
2.4.1.	Are expenses linked to patents eligible? Please define NB: *under current French tax law, expenses linked to the filing, the maintenance and the defence of patents incurred in France or in another State (IP consultant's fees, translation costs taxes...) are eligible to the R&D tax credit; insurance costs linked to patents are eligible within a threshold of EUR 60,000. However, under the Frascati criterion, R&D would typically not include administrative and legal work connected with patents, routine tests or data collection.*	Not yet defined.	
2.5.	**Other operating expenses related to R&D**		
2.5.1.	Should such category be identified?	Not yet defined.	
2.5.2.	Is a detailed list possible of expenses advisable?	No.	
2.5.3.	Is it appropriate to assess these expenses notionally by reference to other precisely defined eligible expenses (e.g. 15% of immovable [property] depreciation allowances, and/or 50% of eligible staff expenses)?	Not yet defined.	

2.5.4.	Should fees paid to external consultants assisting the company to determine its R&D super deduction be eligible, and to what extent?	Not yet defined.	
C.	**Contracted Expenditure**		
2.6.	**Subcontracting expenses**		
2.6.1.	What if R&D activity is outsourced? *Currently in France, payments to R&D service suppliers, public or private, accredited by the French Ministry of research and located in the EU or the EEA, qualify as eligible expenses.*	In the CTR III, R&D activity outsourced in Switzerland were included in the R&D 'super-deduction'. Thus this super deduction was limited to expenses incurred in Switzerland by Swiss resident taxpayers or paid to third parties for R&D activities performed within the Swiss territory.	
2.6.2.	Should there be a territorial limit to exclude payments to subcontractors outside the EEA (which cannot invoke the freedom to provide services).	In the CTR III, it was only the expenses related to R&D activities performed abroad that were excluded from the increased tax deduction. Expenses for foreign (i.e. outside of Switzerland) R&D activities did not qualify for the super-deduction.	
2.6.3.	Should there be other limits? *Under current French law for instance, R&D costs invoiced by accredited private subcontractors can be retained within the limit of three times the total amount of all the other R&D eligible expenses incurred by the company; and such expenses can be retained by the company subcontracting R&D works within a yearly limit of EUR 12 or 10 million and EUR 2 million when the parties (i.e. ordering company and R&D supplier) are related companies.*	According to the CTR III, if assignor of a mandate of research and of development (*'mandant'*) can benefit from the super deduction, the assignee (*'mandataire'*) is not entitled to any super deduction. We do not know yet whether this rule will be taken over in the PF 2017 but we think it will be since preparatory work of the Federal department in charge of the legislative bill mentioned that the super deduction can not benefit both the assignee and the assignor.	

B.	**Reimbursed expenditure**		
2.7.	**Treatment of public subsidies**		
2.7.1.	Should governmental and other State agencies subsidies/grants related to R&D eligible projects be deducted from eligible expenses of the year during which these expenses are incurred?	Not yet defined.	