

Foreign Fines Tax-deductible Only in Exceptional Cases under New Swiss Law from 2022

[Michele Tagliaferri](#), [Andreas Balsiger Betts](#), [Yuliya Gevrenova](#)

Switzerland's Federal Council announced on November 11, 2020 that the [Federal Act on the Tax Treatment of Financial Sanctions](#) (the New Law) will harmonize Swiss criminal and tax law, and prohibit tax deduction of certain illegal payments made by companies. While payments of bribes to private individuals have been criminalized since 2015, under the current tax laws companies can still file corrupt payments as tax-deductible business expenses. This will be no longer allowed once the New Law enters into force on January 1, 2022.

The New Law implements a motion submitted by MP [Werner Luginbühl in June 2014](#), entitled "*Tax deductibility of fines*," which called for both domestic and foreign financial sanctions of a criminal nature to be non-tax-deductible, in line with the recommendations of the OECD's Financial Action Task Force on Money Laundering. Under the New Law, domestic financial sanctions will no longer be considered commercial charges, and therefore will not qualify as tax-deductible expenses.

Currently under Swiss Criminal Law, expenses which facilitate criminal offenses, or are provided in return for committing criminal offenses, can be considered illegal (e.g., terrorist financing). In practice, however, there are many situations where it is difficult to determine whether such expenses violate criminal law (e.g., renting business premises that are used for criminal activities), which results in these expenses often being classified as business-related, and therefore tax-deductible. This will no longer be the case under the New Law, which makes kickbacks that enable or reward criminal offences no longer tax-deductible.

Finally, it should be noted that the New Law provides for an exception, whereby foreign criminal fines or pecuniary administrative sanctions (notably sales-related administrative fines) may still qualify as tax deductible. This is possible if the fines or sanctions at issue either violate the principles of Swiss public order (i.e. contradict the general sense of justice as perceived in Switzerland), or if a company can credibly show that it has taken all reasonable steps to comply with the law. In practice, the tax deductibility of financial sanctions will need to be assessed on a case-by-case basis. The burden of proof will lie with the taxable company, but it will not have to provide full proof; a prima facie case will suffice.

Although it will be critical to see how the New Law will be applied and enforced, Swiss companies are well advised to start assessing the New Law and its implications on their business and operations.
