

RECENT TAX DEVELOPMENTS IN SWITZERLAND

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Recent Swiss tax developments

- Exchange of information
- Treaty news
- Cantonal corporate tax dispute with the EU
- Domestic tax reform
- Lump sum taxation reform
- Improvement of federal ruling practices

Exchange of information

Swiss basic principles for exchange of information :

- Established administrative assistance procedures must be respected
- International cooperation exclusively within framework of treaty or agreement
- Restricted to taxes that fall within the framework of the double tax treaty
- Administrative assistance limited to individual cases (specific and justified request, person concerned and holder of information must be identified)
 - no information exchanged in case of fishing expeditions
- No exchange based on stolen information (but how does one verify that?)
- The principle of subsidiarity must be respected; and the other contracting state must be willing to eliminate discrimination (e.g. Italy)
- Fair transitory solutions must be found
- Federal Ordinance in force since October 1, 2010. A federal law on the exchange of information based on the above principles is in preparation and will be enacted soon, likely during 2011

Exchange of information (cont'd)

Taxpayers' rights :

- Swiss domestic law provides for procedural rights protecting taxpayers, Swiss and foreigners alike
- No information can be exchanged before notifying the taxpayer
- The taxpayer has the right to be informed of, to be heard on and to object to (and eventually appeal) a decision by the Swiss FTA to exchange information
- The objection or appeal suspends the exchange

Corporates also concerned :

- Exchange of information also for corporate taxpayers
 - What does this imply for tax rulings, tax declarations, accounts, etc.
- Possible impact for transfer pricing procedures ?

Exchange of information (cont'd)

- After discussion with the OECD, the Swiss Federal Council decides on 13 February 2011 to enlarge the interpretation of a valid request for exchange of information. New interpretation presented to Parliament on April 6, 2011. Causing delay of ratification of new treaties, even those already containing the new interpretation
- Requests for administrative assistance need to be interpreted in such a way that an effective exchange of information is not hindered :
“In terms of application, the purpose of referring to information that may be foreseeably relevant is intended to provide for exchange of information in tax matters to the widest possible extent without allowing the contracting states to engage in fishing expeditions or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer. The details to be supplied in the administrative assistance request are important procedural requirements to ensure that fishing expeditions do not occur, but they must not be interpreted in such a way that they frustrate effective exchange of information.”

Exchange of information (cont'd)

- Whereas the rule on interpretation already ensures internationally applicable standards on administrative assistance, administrative assistance practices still have to be fleshed out by defining the rule on interpretation. In particular, it highlights that administrative assistance requests which are not fishing expeditions will be honoured if the requesting state:
 - a) identifies the taxpayer, although this identification can ensue in a way other than by indicating the name and address,
 - b) indicates the name and address of the alleged holder of the information, insofar as this is known to it. In the case of missing data on the information holder, Switzerland will provide administrative assistance if administrative assistance requests are in line with the principles of proportionality and practicability in accordance with internationally applicable standards.

2010/2011 Swiss treaty news

Over 90 double tax treaties in force, over 30 treaties signed with exchange

New treaties :

- in force without exchange : Ghana and Chili
- in force with exchange : Austria, Denmark & Faroe Islands, Finland, France, Luxembourg, Mexico, Norway, Qatar, Spain(MFN) and the UK
- entering into force soon : US
- signed with : Canada, Georgia, Germany, Greece, Hong Kong, India, Japan, Kazakhstan, Malta, the Netherlands, Poland, Romania, Singapore, Slovak Republic, South Korea, Sweden, Tajikistan, Turkey and Uruguay
- initialed with : Ireland, Oman, the Russian Federation and the UAE.

New treaty policies :

- Exemption from WHT on dividends paid to **qualifying pension schemes** (e.g. new treaties with the UK, US and the Netherlands)
- Exemption from WHT on dividends paid to **sovereign funds** (only with Qatar sofar)

Swiss treaty news (cont'd)

Spectacular developments :

- October 25, 2010, signing of new treaty with the UK and a joint declaration of the UK and Swiss governments that negotiations will be held in order to :
 - **regularize** the past (existing undeclared assets should be regularized) ;
 - **final withholding tax** shall apply on investment income in the future, rate yet to be determined, extended information exchange will apply to fight abuse ;
 - **market access** for Swiss financial institutions into the UK ; and
 - **decriminalization** of banks and their staff
- October 27, 2010, signing of new treaty with Germany and the same joint declaration.
- New policy ? What's the strategy ? Why do the UK and Germany want this ?

EC-Swiss cantonal tax dispute

- EC-Swiss tax dispute on cantonal corporate taxation since 2005
- EU claims that the Swiss cantonal tax privileges constitute forbidden state aid (based on FTA 1972)
- Legal basis rather weak, but political pressure huge
- Switzerland does not negotiate with the EU, but engages in a “dialogue”
- Cantonal tax privileges will likely have to be changed or abolished
- Proposed Enterprise Tax Reform III deals with only part of the problem
- Question is what attractive new regimes can replace the current ones

- Latest development : ECOFIN 8 June 2010 demands the Commission to open discussions with Switzerland and Liechtenstein in view of implementing the Code of Conduct (enterprise taxation, ECOFIN 1997)

Domestic tax reform

Enterprise tax reform

- Enterprise tax reform II – implementation as per 2011 at the latest :
 - most notably reduced taxation (40 or 50% reduction) of dividend income for Swiss substantial shareholders ($\geq 10\%$) and
 - reduction of the participation exemption threshold from 20 to 10% (also new Swiss treaty policy) and
 - imputation of corporate net wealth tax on income tax
- Enterprise tax reform III – consultation, in preparation (related to EU discussions on state aid)
- Enterprise tax reform IV – future, international tax competition

Domestic tax reform (cont'd)

Introduction of the contributed capital concept since January 1, 2011

- All shareholders' contributions now qualify as paid-in equity for tax purposes. This covers mainly Agio or capital surplus. Previously only the nominal share capital was recognized as paid-in shareholders' equity for Swiss tax purposes.
- As a consequence, repayment of contributed capital is now free from the 35% Swiss dividend WHT
- Only capital contributions made as of January 1, 1997 qualify
- The capital contributions must be accounted for in the tax books of the company and reported to the Swiss Federal Tax Administration within 30 days after approval of the accounts by the AGM.

Domestic tax reform (cont'd)

Taxation of employee share and stock option plans

- New Federal Law on the Taxation of Employee Participations approved by Parliament on December 17, 2010. Referendum delay expired on April 7, 2011. Entry into force likely January 1, 2012.
- Employee Participations defined as shares, profit shares, participation rights, share quotas and any other participations granted by the employer, the parent company or any other group company to the employee + options to buy such Participations.
- General rule: taxation upon grant based on market value
- Exceptions: non-listed/restricted options taxable upon exercise
- Reduction for blocked participations: 6% per year and max 10 years

Domestic tax reform (cont'd)

Since August 1, 2010, Federal Ordinance modifying the tax treatment of intragroup financing activities :

- Intragroup loans are now exempt from stamp issuance tax and stamp transfer tax
- Interest payments on intragroup loans no longer subject to interest WHT
- Important relaxations to promote intragroup financing activities in Switzerland

Swiss VAT

- VAT reform entered into force on January 1, 2010
- VAT rate increased from 7.6 to **8%** on January 1, 2011

Reform of lump sum taxation (“forfait”)

- Abolition of lump-sum taxation in Zurich as per 2010 as a result of a popular vote (referendum). New popular votes to abolish lump sum taxes in St Gall, Lucerne, Glarus and Basel City. Similar initiatives expected in Berne, Thurgau, Zug, Vaud, Appenzell-Ausserrhoden, Schaffhausen and Basel Land.
- Swiss federal council proposed to change the federal and cantonal laws with respect to lump sum taxation, perhaps as per 2012 :
 - increase minimum from 5 to 7 times rental value or annual rent ;
 - fix a minimum tax base of CHF 400'000 for federal tax purposes and the cantons will also have to fix a minimum tax base ;
 - the lump sum tax treatment will also include net wealth tax ;
 - all current lump sum tax rulings will be respected for a transitory period of five years

Improvement federal practices

Two major recent developments in the Swiss federal ruling practice :

- Federal withholding tax (dividends) – in international holding context no longer necessary to prove physical and functional substance. Generally sufficient that the foreign parent company disposes of sufficient equity (at least 30%) in order to be considered beneficial owner of the Swiss dividend received easier to exit Switzerland at 0% by using holding companies in e.g. Malta or Cyprus or Luxembourg or the Netherlands
- Domestic anti-treaty abuse rules (1962/1999) are relaxed since August 2010. Licensing or financing companies can now be considered active if the Swiss company disposes of at least one competent employee.
Possible to engage in royalty conduit structures or back to back financing and still make use of the extensive Swiss treaty network (over 80 treaties in force)

Any questions ?

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