Overview of Corporate Taxation in Switzerland

1. Territoriality / Competent Authority

Swiss income taxes are in general regulated by federal tax law (FTL) and 26 cantonal tax laws. However, all cantonal tax laws are required to comply with the general principles as stated in the Federal Tax Harmonization Law (THL), but the tax rates are at the discretion of the cantons. Considering that tax legislation is harmonized at cantonal/communal level, most of the tax regulations are identical or very similar, also compared to the regulations applicable on federal level.

From an administrative point of view, the cantonal/communal authorities are responsible for enforcing federal, cantonal and communal corporate income taxes from companies that are resident or operate a business through a permanent establishment in Switzerland.

2. Tax Residency

Swiss corporations ("AG"), limited liability companies ("GmbH"), companies with unlimited partners ("KolG"), cooperatives ("Genossenschaft"), foundations ("Stiftung"), associations ("Verein") and investment trusts with direct ownership in real estates ("Anlagefonds mit direktem Grundbesitz") are generally taxable persons for Swiss tax purposes (exception may apply for certain organizations).

Legal entities which have their effective place of management in Switzerland are resident in Switzerland as well. Furthermore, non-resident corporations with a permanent establishment or real estate in Switzerland are deemed resident for tax purposes through economic affiliation.

Every company is taxed as a stand-alone entity; there are no tax groups or possibilities of tax consolidation in Switzerland.

3. Determination of Taxable Income

Swiss resident companies are subject to income tax on their worldwide income, with the exception of income attributable to foreign permanent establishments or foreign immovable property.

Swiss permanent establishments of non-resident companies are subject to income tax on the income attributable to the permanent establishment. Non-resident corporations with real estate in Switzerland are further only subject to income derived from that Swiss real estate.

The statutory accounts of a Swiss company – or in the case of a foreign company the branch accounts – are the basis for determining taxable income. Swiss corporations are assessed to income tax on their net profit after tax (i.e. tax expenses are deductible in Switzerland) as shown in the statutory financial statements prepared in accordance with the statutory provisions contained in the Swiss Code of Obligations (OR).

As the tax treatment generally has to follow the accounting treatment ("Massgeblichkeitsprinzip"), no separate tax accounts have to be prepared and there are generally few tax adjustments only (e.g. use of existing tax losses carried forward, application of participation exemption, consideration of thin capitalization rules), if any, which are to be considered in the tax return.

A tax relief for dividend income and capital gains income of a company is applicable in case of (i) a minimum 10% participation quota or a fair market value of minimum MCHF 1 for dividends, and in case of (ii) a minimum 10% participation quota and a holding period of minimum 12 months for capital gains. The participation exemption regime leads to an exemption of qualifying participation income of up to 100%. There are no subject-to-tax rules or restrictions for passive income to be considered.

Capital gains realized by the sale of real estates are either subject to income tax or real estate capital gains tax (depending on canton/community of location of the respective real estate). The same holds true for the sale of a majority of the shares in a real estate company, thus, depending on canton/community of location of the real estate, real estate capital gains tax may be triggered in such case as well.

Additionally, a real estate transfer tax may need to be considered in case of the sale of a real estate or the sale of the majority of shares in a real estate company. Real estate transfer taxes are also cantonal/communal taxes and it is therefore again decisive in what canton/community the real estate is situated.

Expenses are tax deductible to the extent that they are commercially justified and meet the arm's length principle. The Swiss Tax Authorities publish safe haven rates in relation to depreciation, interest expenses and bad debt and stock provisions.

Swiss thin capitalization rules apply to related party loans. There are guidelines on interest rates to be applied as well as on maximum underlying debt for each asset category. Third party debt financing is not restricted. In case of an excess of related party debts, the excess will be treated as taxable equity for tax purposes ("hidden equity"). Any interest paid on the respective portion of hidden equity is further added back to taxable income and subject to withholding tax ("deemed dividend distribution").

Tax losses can be carried forward for up to seven years; however, there is no possibility of a carry back. Furthermore, losses of foreign permanent establishments can also be offset with Swiss income provided there are no foreign profits. In case that profits are realized in the foreign permanent establishment within the following 7 years, certain claw-back provisions apply. Finally, no forfeiture of tax losses carried forward applies in the case of a change of ownership.

4. Determination of Taxable Equity

Swiss corporations are assessed to tax on net equity as shown in the statutory financial statements prepared in accordance with statutory provisions. Capital tax is levied at cantonal/communal level only.

Net equity is generally represented by nominal share capital, the share premium account (additional paid-in capital), legal and other reserves as well as retained earnings.

Tax on equity also applies on so-called hidden equity (pls. refer to our comments above regarding thin capitalization).

Some cantons provide for crediting the cantonal corporate income tax against capital tax.

5. Tax Rates

Ordinary Tax Rates

The ordinary effective tax rates for companies on profit before tax vary between 11.5% and 24.4% (covering income tax on federal as well as cantonal/communal level, further considering that taxes are tax deductible), depending on canton and community of domicile.

Capital tax varies between 0.01% and 0.5%, further depending on canton/community of domicile (no capital tax levied on federal level).

Base erosion planning (e.g. by depreciation of IP, foreign branch allocation etc.) may lead to a lower effective income tax rate.

Special Tax Status

Furthermore, depending on substance as well as functions performed, a special tax status may be applicable. Switzerland does generally provide for the following statuses [1]

- Holding company: The tax status of a holding company provides full exemption of income tax on cantonal/communal level, therefore income tax is levied at federal level only at an effective tax rate of 7.8%. In addition, capital tax levied on cantonal/communal level is reduced. In order to qualify for the holding privilege, the following conditions need to be met.
    - Holding and management of long-term investments in related companies;
    - No or only minor commercial activities;
    - Two thirds of the company's total assets need to consist of qualifying shareholdings or, alternatively, two thirds of the company's total gross income must derive from dividends from qualifying companies.
- Mixed Company[2] : The activities of a mixed company needs to be predominantly abroad, i.e. minimum 80% of the income needs to be derived from outside of Switzerland and minimum 80% of

[1] It is to be noted that the Tax Proposal 17 currently being in process considers different changes in current tax legislation and practice also with regard to the tax statuses currently granted. They will generally be abolished and other measures (e.g. patent box, R&D incentive, lower tax rates, etc.) will be introduced. However, it is expected that respective implementation of new tax regimes/new rules applicable will not enter into force before 1 of January 2019.

[2] The Mixed Company is a tax status that can be used for different kind of business activities (trading, financing, IP related activities). With regard to an IP Company, it is further to be considered that the canton of Nidwalden additionally offers a special License Box regime, leading to an effective tax rate of 8.8%.

expenses need to be generated abroad. As a result, only a certain quota of foreign income is subject to tax on cantonal/communal level (leading to an overall effective income tax rate of 8.5-10.5%, depending on canton of domicile). Furthermore, reduced tax on equity applies.

- Finance Branch: The Finance Branch regime may be applicable in case a legal entity provides financing functions (minimum 75% of its functions) mainly for related companies (conditions to be met: total assets of minimum MCHF 100; loans to Swiss group companies not exceeding 10% of the total assets). The Finance Branch regime is based on a deemed interest deduction scheme (exemption of 91%) as well as the applicability of the Mixed Company status, leading to an effective income tax rate of 1% - 2%.
- Principal Company: The tax privilege of a Principal Company may apply for companies that centralize the functions and risks within their group and do perform business through contract manufacturing and limited risk distributors/commissionaires or agents. Within the Principal Company regime it is required that minimum 90% of the income of the LRD's is originated by the sale of the Swiss Principal products and the income margin of the LRD's achieved and calculated on the gross profit or on the total costs does not exceed 3%. Furthermore, sufficient personnel carrying out the main functions of the Principal Company is required. Depending on the functions performed and the respective international income allocation key the overall effective income tax rate applicable for the principal headquarter varies between 5% and 8%.

The tax statuses as outlined above are to be discussed with and granted by the competent tax authorities. Within the negotiation process, binding confirmation of the applicability of the law in specific scenarios is achieved by filing respective ruling request (please also refer to our further comments below).

Tax Holiday and Business Incentives

If a new business serves the economic interest of certain Swiss regions and creates new jobs, a tax holiday for up to 10 years or other business incentives (e.g. financing, subsidies, etc.) may be granted under certain conditions.

6. Tax Return and Assessment Procedure

A tax year covers 12 months and generally coincides with the calendar year, however, companies are free to choose a different financial year. Tax returns generally need to be filed within six to twelve months after the company's financial year end (depending on the canton).

Cantonal income taxes are generally payable by instalments during the financial year (based on the tax charge in the prior year) and based on a final assessment after the year end (upon reception and review of the respective tax return by the tax authorities). The due date is usually in Q3 or Q4 of the current financial year (late interests may be triggered in case of unsufficient payments on account). Federal corporate income tax is due on 1 March following the end of the financial year and payable within 30 days.

The tax return is reviewed by the competent cantonal/communal tax authorities. In case the assessment received may not be in accordance with the tax return that has been filed and the applicable law, an appeal may be filed within thirty days upon reception of the final assessment.

Tax audits may be initiated from time to time, however there are no specific intervals for such audits and not every company may be subject to an audit at all.

7. Other Considerations

Transfer Pricing

Switzerland does not have specific transfer pricing legislation and there are no particular documentation requirements in this respect. Nevertheless, under the general tax provisions, related party transactions must be at arm's length and commercially justified.

Controlled Foreign Company (CFC) Rules

Unlike many other countries, Switzerland does not have any CFC rules.

Functional Currency

While tax returns must be filed in CHF based on Swiss Franc statutory accounts, other functional currencies can be used as a functional currency. Based on a court decision of the Federal Supreme Court, currency gains or losses which are based on the conversion of the financial statements from a functional currency into Swiss francs at year end have to be distinguished from "operative" currency gains or losses that are based on foreign currency transactions of a company. In particular, the court decided that foreign exchange effects resulting from the mere conversion from a functional currency (other than CHF) to CHF are not relevant for Swiss tax purposes and therefore should be neutralized.

Furthermore, as of 1 January 2013 new accounting principles have entered into force (applicability as of 1 January 2015/2016 respectively, i.e. after expiration of the respective transmission period, covered by the Swiss Code of Obligations (OR)). Based on these principles, it is possible to keep the books as well as reporting in another currency than CHF.

Reorganization Rules

Swiss tax law allows tax exemption in case of reorganization (i.e. merger, demerger, hive down, share-for-share transfer, transfer of assets, conversion) provided certain conditions are met:

- continuation of the tax liability in Switzerland;
- transfer of business assets/investments at tax book values;
- disposal restriction period or other specific conditions might apply.

Tax neutrality can be achieved for direct, indirect, real estate capital gains tax and real estate transfer tax purposes.

Tax Ruling Process

A tax ruling is a written, binding agreement with the tax authorities on any tax relevant matter (e.g. reorganization of a group, functional currency matters etc.). Any risk of unfavorable interpretation of Swiss tax legislation and practice can mostly be eliminated in advance by filing a binding ruling request (ruling process does normally last for two to four weeks).

All relevant facts have to be disclosed to the competent tax authorities – tax rulings are based on mutual trust. Furthermore, there is no limitation in time. In case of any changes in tax law, transition periods are generally granted

8. Other Taxes

Withholding Tax

In Switzerland, a 35% withholding tax is levied on dividends paid by a Swiss corporation as well as payments of interest in respect of Swiss bonds, cash bonds, money market instruments and any client deposits at Swiss banks.

Furthermore, the distribution (including the reinvestment in the context of non-distributing funds) of income from Swiss funds is also subject to withholding tax (based on the so called "Affidavit Procedure" no withholding tax is however levied if more than 80% of the income generated by the fund is foreign sourced and the unit holder is resident outside Switzerland which is evidenced).

It is to be noted that there is a special tax which has to be withheld on interest in respect of loans having a Swiss real estate collateral (the tax rate applicable depends on the canton where the real estate is located).

Transfers of profits by a Swiss branch to its foreign head office are not subject to withholding tax.

Furthermore, royalty payments, management and service fees as well as interests on loans (if not paid by a bank) are not subject to withholding tax in Switzerland provided the arm's length principle is met. Thus, it is to be noted that any related party's transaction may trigger withholding tax consequences in case respective payment initiated towards a related person or company may not meet the arm's length principle. In such a case the respective payment may be qualified as a deemed dividend subject to withholding tax and the actual amount of the benefit for the recipient (the difference between the actual amount and the amount which would meet the arm's length principle) may further be regarded as a net 65% dividend after deduction of withholding tax and the withholding tax levied would actually amount to 53.8%.

No withholding tax is levied on repayment of share capital and repayment of share premium qualifying for the so called "capital contribution principle" (former direct shareholder contributions qualifying as capital contribution reserves).

In case a Swiss withholding tax has been levied, a refund procedure generally enables Swiss resident individuals as well as legal entities to obtain a full refund. However, full reduction of withholding tax at source based on the so called "notification procedure" may also be possible for intra-group dividends within Switzerland.

Switzerland does have an extensive treaty network (over 90 tax treaties have been concluded), thus, based on the respective treaties in place a full/partial refund of the withholding tax levied on dividend distributions from a Swiss company to its foreign shareholder should be possible, provided the respective conditions are met. Additionally, the EU-Swiss Savings

Agreement (bilateral agreement with the EU) may also provide full/partial refund of the withholding tax levied. A notification procedure may apply in case the corporate shareholder is resident within the EU or a state Switzerland has a double tax treaty with and under consideration of the respective conditions.

In case of reorganizations and further provided respective conditions are met, no withholding tax consequences should be triggered (please also refer to the above comments).

Issuance Stamp Tax

Issuance stamp tax applies on the issuance and increase of equity of Swiss corporations at a rate of 1% on the cash/fair market value of the assets contributed by the direct shareholder (first MCHF 1 million is however exempt). No issuance stamp tax is levied on the issuance of bonds and commercial papers.

Provided certain conditions are met, stamp duty may not be triggered in case of specific reorganizations (please also refer to the comments above).

The recapitalization by shareholders of a company which is over-indebted may also qualify for an exemption if certain requirements are met.

Securities Transfer Tax

Securities transfer tax may apply on the transfer of ownership (i.e. purchase, sale or exchange), of Swiss and foreign taxable securities where a Swiss bank or another Swiss securities dealer acts as a counterparty or an intermediary.

The following parties would generally qualify as Swiss securities dealers:

- Banks and bank-like financial institutions subject to Federal Banking Law as well as the Swiss national bank;
- Swiss companies and Swiss pension funds whose assets include taxable securities with a book value of more than MCHF 10;
- Swiss individuals, corporate entities, partnerships as well as branches of foreign enterprises whose activities exclusively or substantially encompass the trading of securities on third party accounts or brokering such securities as portfolio managers.

Securities transfer tax applies at a rate of 0.15% in case of Swiss securities and 0.3% in case of foreign securities (remuneration paid generally to be considered when determining respective tax liability).

However, certain transactions may qualify for an exemption (e.g. qualifying reorganizations, please also refer to the above comments). Additionally, certain counterparties may be exempt and tax liability may only be due by one of the parties involved (or – in case both counterparties are exempt – by none of them).

Value Added Tax

Swiss VAT is payable on the supply of goods or services by businesses that are taxpayers for VAT purposes, on the import of goods and on services received from abroad. Certain goods and services are exempt from VAT (e.g. financial services, real estate transactions, the transfer of shares).

Exports and turnover generated abroad (neither in Switzerland nor in Liechtenstein) are not subject to Swiss VAT.

However, any individual or legal entity (e.g. a subsidiary, branch or trader) performing an income-producing commercial, professional or non-profit oriented activity is required to register for and to charge VAT if the total of supplies of goods, services and self-consumption within Switzerland exceeds CHF 100,000 per annum.

It is to be considered that VAT may also payable by individuals/legal entities who receive services from abroad.

The current VAT rates in Switzerland are as follows:

- Standard rate: 7.7%
- Reduced rate (e.g. food, medicine, newspapers, books): 2.3%

Special rate for lodging services: 3.5%

Full or partial refund of the input VAT may be available (reduction of the input tax only with regard to exempt turnover and certain so called “non-turnover”).

Swiss entities can – for VAT purposes – form a group.

VAT optimization by voluntary VAT registration is possible in certain cases, which may provide tax efficient VAT planning.

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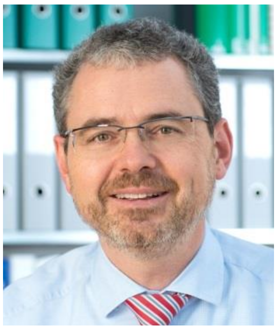

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