SWITZERLAND

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1. INTRODUCTION

a. Forms of Legal Entity

Swiss entities whose legal personality is recognised under Swiss private or public law are considered as legal entities and are subject to Swiss corporate tax. Legal entities are stock companies, limited liability companies, stock companies with unlimited partners, cooperatives, associations and foundations, and exceptionally, investment trusts with direct ownership of immovable property.

b. Taxes, Tax Rates

Legal entities are subject to corporate tax at federal, cantonal and communal level. Depending on the tax domicile the effective and ordinary corporate tax rate before tax is currently between 12% -21% (tax rates for 2021).

The statutory financial statements are prepared in accordance with the general accounting provisions of the Swiss Code of Obligations. They are basically decisive to calculate the taxable profit (so-called authoritative principle).

2. RECENT DEVELOPMENTS

a. Tax Reform and old-age pension system ("OASI") financing

On 19 May 2019, Swiss voters accepted the Federal Act on Tax Reform and OASI Financing (TROF Act). The reform at federal level and the implementations at cantonal level entered into force on 1 January 2020. The aim of the proposal is to create an internationally compliant, competitive tax system for companies and to help secure AHV pensions. The key changes can be can be summarised as follows:

- Abolition of tax privileges

  The cantonal tax regimes for holding, mixed, and domiciliary companies have been abolished. At the federal level, the privileged treatment of principal companies and finance branches have also been abolished. Companies that lose their privileged status are given the option, if cantonal practice allows it, to disclose their existing hidden reserves tax-neutrally.

- Patent box system

  A mandatory patent box is introduced at cantonal level. With this patent box, the net profit attributable to patents and comparable rights is taxed at the ratio of the qualifying research and development expenditure to the overall research and development expenditure per patent or comparable right (nexus quotient) with a maximum reduction of 90%. This measure does not apply to the direct federal tax.

- Deductions for research and development

  The deduction for research and development costs incurred domestically may not exceed 150% of the actual costs. It is up to the cantons to decide whether they want to implement this measure. It does not apply to the direct federal tax.

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- Deduction for equity financing (notional interest deduction)

  High-tax cantons shall have the option of introducing a deduction for equity financing. A canton is deemed a high-tax canton if the (cantonal and communal) tax rate is at least 13.50%. Which means that only the Canton of Zurich is able to benefit from this rule.

- Cap on tax relief

  Tax relief on profit derived from the three aforementioned privileges is capped at 70% (i.e at least 30% of the taxable profit is liable for taxation). This cap also includes write-downs on the disclosed hidden reserves as well as internally generated add-ed value (goodwill) thanks to earlier taxation as a privileged status company (step-up under old law). This measure is mandatory for the cantons but does not apply to the direct federal tax.

- Adjustments to the capital tax

  The cantons may grant capital tax relief. Such relief relates to the equity capital of a company that is attributable to participations, patents, and loans to group companies.

- Disclosure of hidden reserves when moving the domicile to Switzerland

  Companies that transfer their domicile to Switzerland can disclose hidden reserves as well as internally generated added value tax-neutrally, and subsequently benefit from additional write-downs. This measure applies to the direct federal tax as well as to the cantons.

- Limitation of the capital contribution principle

  The tax reform limits the tax-free re-payments of capital contribution reserves ("KER"), a principle that was introduced in the second round of corporate tax reforms. The new rule makes repayments conditional, in that corporations and cooperatives listed in Switzerland can only make tax-free KER re-payments if they also distribute at least a matching amount of (taxable) dividends from commercially distributable other reserves (applies both federally and at cantonal level). An exception applies to foreign KER, i.e KER accruing after 24 February 2008 in the context of a relocation to Switzerland or a transfer of assets from abroad. This restriction also applies analogously to the issue of bonus shares or increases in nominal value.

- Partial taxation of dividends

  The partial taxation of dividends from qualifying participations (10% or more of the capital) is set at 70% at federal level (before: 60%) and shall amount to at least 50% at cantonal and communal level (before: no lower limit). The cantons are free to opt for a higher limit.

- Adjustments to tax-free capital gains (transposition)

  Under the existing regime, individuals were able to sell participations of maximum 5% to own-controlled capital companies at market value without any tax implications. This threshold is to be abolished, which means that even portfolio securities will now be affected by the transposition restrictions.

b. Coronavirus Aid Relief

In view of the huge economic uncertainties and acute liquidity crisis facing many businesses and individuals as a result of the global spread of COVID-19, the Swiss Federal Council on 20 March 2020 launched a comprehensive package of measures to cushion the financial fallout from the pandemic's extraordinary impact. The package totalled CHF 40 billion and also contains a guarantee program for COVID-19 bridging credit facilities. Due to the considerable demand, on 3 April 2020, the Federal Council decided to expand by another CHF 20 billion up to a total of CHF 40 billion the guarantee program for bridging credit facilities. On 22 April 2020, the Federal Council further decided to use the existing system of guarantees for SMEs to provide support for start-ups. Beginning of May the National Council and the Council of States met for the first time since the escalation of the COVID-19 crisis and since then, the Parliament is again capable of acting. The Parliament widely confirmed the measures decided by the Federal Council.

- Waiver of interest on arrears

The relief measures provided that no interest on arrears would accrue between 1 March 2020 and 31 December 2020 for late payments of the direct federal tax bills due in that period. This applies to individuals as well as legal entities.

As regards the cantonal/communal tax, some cantons decided to temporarily waive any interest on arrears (such as the Canton of Aargau, Bern, Basel-Land, Geneva, Glarus, Graubünden, Jura, Lucerne, Neuchâtel, Nidwalden, Schaffhausen, Schwyz, Solothurn, Ticino, Vaud, Valais and Zug). The Canton of Zurich decided to reduce the interest rate to 0.25%, not to suspend it completely. The period of suspension of interest on arrears varied from canton to canton. It is important to carefully look at how each canton handled this.

Independently of any such measures, it is possible to apply for deferred payment terms or payment by installments for both the direct federal and the cantonal/communal taxes.

The temporary waiver of interest on arrears does not apply to the federal withholding tax and stamp duties. This is very unfortunate given the high rate of interest on arrears (5%) charged for these taxes.

As regards the VAT, customs duties as well as special taxes and steering duties (tobacco, alcohol, beer, vehicle, fuel, and mineral tax), the interest rate on arrears was set at 0% from 20 March 2020 until 31 December 2020. However, taxpayers are still obligated to submit their tax statements within the statutory deadline.

In practice, this means that companies liable for VAT benefit from interest-free bridging loans – provided that they achieve turnover.

On 8 April 2020, the Federal Council decided to temporarily suspend customs duties on imports of important medical goods. This came into force on 10 April 2020 and remained in force until 9 October 2020.

i Cross-border commuters with some neighbouring countries

The state of Secretariat for International Financial Matters ("SIF") reported the conclusion of a new consultation agreement between Switzerland and France on the taxation of cross-border commuters for home office work. This shows in particular that the days on which cross-border commuters benefiting from the agreement have to stay in their place of residence because of measures to combat COVID-19 are not considered in the 45 non-return days. It is accepted that days worked in the State of residence, at home and for an employer domiciled in the other Contracting State as a result of measures to combat the spread of COVID-19 shall be regarded as working days in the State in which the person would have pursued his employment if there had been no such measures. The provisions entered into force with effect from 14 March 2020 and applied until 31 July 2020, and application was extended.

On 11 June 2020 the State Secretariat for Financial Matters concluded a new consultation agreement between Switzerland and Germany on the taxation of cross-border commuters and the treatment of state support services. The consultation agreement explains in particular how the working days are to be calculated if a cross-border worker has not been able to return to his or her State of residence as a result of the Covid-19 pandemic. The return to the place of residence on each working day is assumed. It's further agreed that the short-time work compensation paid in Switzerland as well as similar compensation which is reimbursed by the Swiss government either directly or through the employer as a result of the measures taken to combat the Covid-19 pandemic are to be qualified as compensation for employment within the meaning of Articles 15 and 15a of the Agreement and are taxed only by Switzerland. Application was also extended.

On 20 June 2020 the State Secretariat for International Financial Matters (SIF) reported the conclusion of a new memorandum of understanding between Switzerland and Italy concerning Covid-19 measures. The provisions of the Memorandum of Understanding shall apply from 24 February 2020 until 30 June 2020 inclusive and ,application was also extended. Exceptionally and provisionally, it is recognised that, for the purposes of applying Article 15, paragraphs 1 and 4, of the Convention and Article 1 of the Convention of 3 October 1974, days worked in the State of residence, at home and for the account of an employer resident in the other Contracting State as a result of measures to combat the spread of COVID-19 shall be regarded as working days in the State in which the person would have worked in the absence of such measures and would have received wages, salaries and other similar remuneration ("income") in return.

ii Deferred payment terms for social security contributions

Since 20 March 2020 companies facing liquidity problems due to the Corona crisis have been able to apply to their compensation fund for a deferral of payment without default interest. In doing so, they must commit themselves to regular installment payments. This possibility of requesting payment in installments of the contributions owed will continue to exist and will be interest-free until 20 September 2020. At its meeting on 29 April 2020, the Federal Council decided that no default interest would be charged in the event of late payment of AHV/IV/EO and ALV contributions during the extraordinary situation. The regulation is limited in time and supplements the already decided measure of interest-free payment deferrals for companies in liquidity bottlenecks. The measure applies applied retroactively from 21 March 2020 to 30 June 2020.

iii Guaranteed COVID bridging loans

To help SMEs (sole proprietorships, partnerships, legal entities) suffering from the COVID-19 fallout to obtain bridging loans from the banks, the Federal Council has launched a credit guarantee program of CHF 20 billion (which has been increased up to CHF 40 million). Affected businesses get access to fast credit of up to 10% of their sales, but no more than CHF 20 million. The program provides that the banks pay out amounts of up to CHF 0.5 million immediately, which will be 100% guaranteed by the Swiss government. Loans exceeding this threshold are to be guaranteed by the Swiss government at 85% of the amount, subject to a brief examination by the banks. The respective implementation ordinance was adopted on 25 March 2020.

iv Expansion and simplification of short-time work

The conditions for the compensation of short-time work have been broadened and applying for it has become easier:

- Compensation for a reduction in work is now also possible for:
  - staff in fixed-term employment and for people working for a temporary placement organisation;
  - people in apprenticeships; and
  - employees who occupy a position comparable to that of an employer.
- The already shortened waiting period for short-time work compensation has been abolished. This means that employers no longer financially contribute to work-loss compensation.
- Employees no longer have to reduce the accrued overtime before they can benefit from short-time work compensation.

On 1 July 2020, the Federal Council extended the maximum period for which short-time working compensation can be paid from twelve to eighteen months. A waiting period of one day also applies. This amendment to the ordinance comes into force on 1 September 2020 and is valid until 31 December 2021.

v Compensation for income loss of self-employed people and employees

The Corona employment compensation for parents who worked and had to look after their children during school closure, for people in quarantine and for self-employed persons is regulated in the "Covid 19 Regulation on Loss of Earnings". The ordinance is valid for six months until 16 September 2020. After that date the Federal Council has stipulated that no new demands based on this ordinance can be asserted. Applications for benefits must therefore be submitted by 16 September 2020.

Self-employed people who suffer a loss of income because of official measures taken to contain the coronavirus outbreak (e.g. who are in quarantine on doctor's orders) can get compensation for loss of income if they are not already being compensated or covered by corresponding insurance. The entitlement was generally limited until 16 May 2020. The entitlement of self-employed persons directly or indirectly affected by measures against the corona virus is extended until 16 September 2020. Persons employed by their own company in the event sector who find themselves in a hardship situation can now also claim corona purchase compensation. In doing so, it is taking account of the fact that many companies are not yet able to commence their activities, or not yet fully, even though the measures against the corona pandemic have been completely or partially lifted.

3. SHARE ACQUISITION

a. General Comments

The share acquisition (share deal) is usually preferred by the seller. In a share deal the seller as a corporation may reduce the corporate taxation on the realised capital gain under the participation exemption and as an individual person may achieve a tax-free capital gain.

b. Tax Attributes

The target company's carried-forward tax losses can generally be used within the maximum offset period of 7 years, even after the transfer of the target company's shares. The transfer of ownership in the target company does not generally impact the carried-forward tax losses. In the case of an acquisition of a shell company (a mostly liquidated company holding cash) the tax losses may not be used.

A change of control within 5 years after a tax neutral intra-group transfer of assets may lead to a breach of restriction period and lead to taxation on hidden reserves. Please see Section 3.d.

c. Tax Grouping

Fiscal unity / tax grouping is not available in Switzerland.

d. Tax Free Reorganisations

A company reorganisation can qualify as a tax neutral reorganisation. Reorganisations mainly include:

Legal mergers: A legal merger qualifies as tax-neutral reorganisation if the assets and liabilities are transferred at book value and the entity continues to be liable to tax in Switzerland. The tax neutrality covers corporation taxes, real estate gains taxes, transfer stamp duty, issue stamp duty and dividend withholding tax. The merger is basically also tax neutral for the shareholders. However, for shareholders holding the shares of the merged entity as their private assets, any cash consideration and increase in nominal value is subject to dividend withholding tax and subject to income tax.

Spin-offs: A spin-off is tax neutral if the demerging company carries on at least 2 businesses, one of which is transferred to another company, the book values remain unchanged and the businesses concerned remain subject to taxation in Switzerland.

There is no disposal restriction period imposed on a tax neutral spin-off. Spin-offs of holding, finance, licensing and real estate companies are possible, but these types of companies must meet certain requirements regarding their business activities and employees to qualify as a business.

Share for share exchanges (quasi-merger): A share for share exchange is tax neutral if a company exchanges its own shares for shares in a different company and immediately after the transaction controls at least 50% of the voting rights in this company and issues formally new shares by way of an increase of the nominal capital. The use of consideration other than its shares does not prevent the transaction from being tax neutral, provided the consideration does not exceed 50% of the value of the total consideration, including the shares.

Hive-downs: A company can transfer a trade or business or a fixed asset tax neutrally at book value to a newly established or an existing subsidiary in Switzerland. A disposal restriction period of 5 years applies. A company can transfer participations of at least 20%, tax neutrally at book value, to subsidiaries in Switzerland or abroad without having to observe a disposal restriction period.

Intra-group transfer of assets: A company can transfer tax neutrally at book value a participation of at least 20%, a trade or business or a fixed asset to a group company within Switzerland. Group companies are defined as companies that are ultimately controlled by the same entity with at least 50% of the voting rights. A disposal restriction period of 5 years applies both to the asset transferred and the group membership. The transfer is only tax neutral if the acquiring entity is subject to tax in Switzerland.

e. Purchase Agreement

For historical tax risks and issues the buyer requires to include a tax representation / warranty clause and/or indemnity clause in the Share Purchase Agreement ("SPA").

If the seller is a Swiss individual person and intends to achieve a tax-free capital gain, usually an indemnity clause for a potential indirect partial liquidation is included in the SPA. According to such a clause the buyer refrains from any action for a period of five years that could lead to an indirect partial liquidation, for example dividend distribution of existing distributable reserves, granting loans that are not at arm's length or dissolution of the target company by way of merger or liquidation. Please see comments under Section 7.b.

f. Transfer taxes on share transfers

Transfer stamp duty (or security transfer tax) is due if taxable securities are transferred for consideration and if a securities dealer, as defined in the Swiss Federal Stamp Tax Act, is involved, either as a party or as an intermediary. Certain types of transactions or parties are exempt.

Security dealers are banks, actual dealers in securities and, among others, Swiss companies that hold securities with a book value of more than CHF 10 million according to their latest balance sheet. A new company should not be liable for stamp duty until 6 months after the first balance sheet showing taxable securities of at least CHF 10 million.

Taxable securities are in particular shares, bonds and participations in mutual funds. The rate of transfer stamp duty is 0.15% for Swiss securities levied on the consideration. If foreign securities are transferred, the transfer stamp duty is 0.3%. Transfer stamp duty is payable by the security dealers but usually paid by the parties to the transaction.

g. "Purchase accounting" applicable to share acquisitions

The purchase price of the shares of the target company is booked as acquisition costs in the statutory financial statements. No purchase accounting adjustments are applicable.

h. Share Purchase Advantages

For corporations the capital gain on the sale of a qualifying participation is tax exempt to the extent that it qualifies for the participation exemption (minimal participation of 10%, holding period of at least 1 year and no recaptured depreciation on the participation).

For individuals holding shares as part of their private wealth, the gain is in general considered as tax free capital gain. In specific cases the tax authorities re-qualify a capital gain as taxable income. Please see further comments under Section VII a. and b.

The buyer can generally use the target company's carried-forward tax losses in Switzerland, even after the transfer of the target company's shares.

i. Share Purchase Disadvantages

The buyer may not be able to offset financing costs against future profits of the target company. No tax consolidation is possible in Switzerland.

In a share deal, the tax base for the shares in the purchaser's books is equal to the purchase price. Except in exceptional cases (e.g. if the acquired company encounters serious financial difficulties), it is not possible to write off the goodwill component on shares for tax purposes.

4. ASSET ACQUISITION

a. General Comments

The asset acquisition (asset deal) is usually preferred by the buyer. Tax risks remain with the target company and are not transferred to the buyer. The buyer may amortise the acquired assets tax effectively, including goodwill.

b. Purchase Price Allocation

A purchase price allocation is necessary in order to support the booking of the assets and liabilities acquired and to apply depreciation rates correctly.

c. Tax Free Reorganisations

An asset deal can qualify as a tax neutral reorganization, in particular in case of an intra-group transfer of assets. Please see further comments under Section 3.d.

d. Purchase Agreement

Basically, in an asset deal tax risks remain with the seller. However, for limited tax risks the buyer requires to include a tax representation / warranty clause and/or an indemnity clause in the Asset Purchase Agreement (APA), in particular in the field of real estate transfer tax and the VAT.

e. Depreciation and Amortisation

The goodwill and other intangibles may be recorded separately and depreciated against taxable income. The goodwill / other intangibles may generally be depreciated over a period of 5 years or longer.

f. Transfer Taxes, VAT

From a VAT perspective the transfer of assets is basically subject to VAT. Depending on the transaction, the VAT due may be notified to the VAT authorities (i.e no cash flow).

g. Asset Purchase Advantages

The buyer may be able to amortise the acquired assets, including goodwill, tax effectively. The buyer may be able to offset financing costs against future profits of the transferred business. However, the buyer cannot use any losses carried forward by the seller.

Losses carried forward of the seller can be set off by the buyer against a capital gain from the sale of the assets. A potential loss from the sale of assets can be offset against profits of the seller.

h. Asset Purchase Disadvantages

For the seller the realised capital gain is subject to corporate taxation (unless the consideration is reinvested in a new fixed asset and the taxation can be carried over under certain conditions).

The buyer cannot use the tax losses carried forward of the target company.

5. ACQUISITION VEHICLES

a. Domestic Acquisition Vehicle

If a Swiss special acquisition vehicle ("SPV") purchases the shares of the Swiss target company and the SPV and the target company are then merged, the SPV's debts will be taken up into the operating company. However, the Swiss tax authorities usually qualify this as an abuse, with the result that the interest paid on debt is not tax-deductible (cannot be offset with profit of the target business). If the SPV is not merged with the target company, dividends paid out by the target company may serve to finance the acquisition debt (participation exemption could be applied on the dividend distributed). In an acquisition by an operational company followed by a merger of the operational company with the target, Swiss tax authorities in general do not treat such debt push-down as abusive.

b. Foreign Acquisition Vehicle

Dividends from a Swiss target company are basically subject to Swiss withholding tax of 35%. Switzerland has concluded tax treaties with numerous countries which provide a full or at least a partial reduction of the withholding tax on dividends. In addition, for EU countries, Article 9 of the Agreement between the European Union and the Swiss Confederation regarding the automatic exchange of information on financial accounts provides for a 0% rate on dividend payments from a Swiss participation to an EU parent company, if the participation amounts to at least 25% and a holding period of at least 2 years is met.

According to the tax practice of the Swiss Federal Tax Administration the 0% rate is granted provided that the conditions according to the corresponding treaty is fulfilled (minimal interest, minimal holding period), the acquiring company has physical substance (office, employees, board members), can be regarded as the beneficial owner of the dividend distributions from the Swiss target (no conduit company) and a tax treaty abuse can be excluded.

c. Strategic vs Private Equity Buyers

In case of a foreign private equity acquiror the Swiss Federal Tax Administration examines the conditions for a reduction of the withholding tax of 35% (in particular the aspect of a tax treaty abuse) based on the double tax treaty more carefully.

6. ACQUISITION FINANCING

a. General Comments

There are basically no challenges or administrative issues for bringing funds into Switzerland.

b. Equity

The increase of equity of a Swiss corporation (for example increase of nominal capital or capital surplus) is subject to issuance stamp tax of 1%. The first CHF 1 million and a tax-neutral merger are exempt, like a quasi-merger or a contribution of qualifying participations.

Capital surplus paid by the direct shareholder and booked separately and shown in the statutory financial statements qualify as tax-free capital contribution reserves whose repayment is not subject to Swiss income tax at the level of private investors and not subject to Swiss withholding tax.

With the tax reform certain cantons (for example the canton of Zurich) may introduce a deduction for equity financing (notional interest deduction) which would reduce the taxable income.

c. Debt

i Thin capitalisation rules

Under the federal thin capitalisation guidelines, the minimum capitalisation is calculated based on the maximum indebtedness of all of the assets. For each type of asset only a specified percentage may be financed with debt from related parties (directly or indirectly).

According to the practice of the Swiss Federal Tax Administration, the maximum percentage of debt authorised for each type of asset is as follows:

- Liquidity – 100%
- Receivables on supplies and services – 85%
- Other receivables – 85%
- Stock – 85%
- Other circulating assets – 85%
- Swiss bonds and foreign bonds in Swiss francs (CHF) – 90%
- Foreign bonds in foreign currency – 80%
- Swiss and foreign quoted shares – 60%
- Other shares and investments in limited liability companies – 50%
- Participations – 70%
- Loans – 85%
- Installations, machines, tools, etc. – 50%
- Operating real estate – 70%
- Villas, parts of real estate, vacation houses and building land – 70%

- Other real estate – 80%
- Cost of foundation, increase of capital and organisation – 0%
- Other tangible assets – 70%

The required equity is calculated on the basis of the fair market value of all assets as stated in the balance sheet at the end of the business year.

The federal tax authorities publish maximum interest rates on borrowings from related parties annually. For the fiscal year 2021, the maximum interest on loans between related parties denominated in Swiss francs for trading/ manufacturing entities amounts to 3% for loans up to CHF 1 million respectively 1% for loans above CHF 1 million and for holding/ asset management entities to 2.5% for loans up to CHF 1 million respectively 0.75% for loans above CHF 1 million. For loans denominated in other currencies the maximum allowed interest rates for the most important currencies are also published by the federal tax authorities. However different interest rates are applicable if the taxpayer can prove that the financing is at arm's length.

Should the interest rates not meet the above requirements, the exceeding interest is qualified as deemed dividend distribution and is not deductible for tax reasons. Furthermore, Swiss withholding tax is levied on the deemed dividend distribution.

ii Swiss withholding tax on interest on bonds and bank deposits

Interest from bonds issued by Swiss debtors and on deposits with Swiss banks are subject to 35% Swiss withholding tax which then can be refunded based on domestic tax law or the relevant corresponding double tax treaty depending on the lender. The definition of a bond is broader and includes also debt-interest bearing instruments which are issued to at least 10 non-bank creditors with identical conditions or to at least 20 non-bank creditors with different conditions and if the total financing amount exceeds CHF 500,000 (10/20 non-bank lender rule). Furthermore, a deposit with Swiss banks includes also any Swiss corporation which have more than 100 interest-bearing non-bank customer deposits with a total financing amount exceeding CHF 5 million. Cash pooling and intercompany financing does basically not fall under these rules with the exemption when a foreign company issues a bond on the market with a guarantee of the Swiss parent company and the loans granted to Swiss companies exceed a certain amount.

d. Hybrid Instruments

For qualification of financial instruments debt and equity is basically based commercial law. However, participation exemption is not granted for dividend income which is tax deductible at the level of the distributing entity.

e. Other Instruments

The acquiror can issue shares as a consideration to the seller. If the conditions for a tax neutral share for share exchanges (quasi-merger) are met, the increase of capital is tax exempt from the issuance stamp tax. Please see further comments under Section 3.d.

f. Earn-outs

Earn-outs paid by the buyer to the seller are part of the sale price of the share in the target company. A corporate seller may apply for the participation exemption on the earn-outs in the tax year when it is booked in the financial statements.

7. DIVESTITURES

a. Tax Free

For corporations capital gain from the disposal of qualifying participations is tax exempt to the extent that it qualifies for the participation exemption. The requirement to qualify for participation exemption is a participation of at least 10% and a holding period of at least 1 year. Recaptured depreciations on a participation are not subject to participation exemption.

Participation exemption does not lead to an exemption of the capital gain from the tax base but is rather a tax abatement mechanism. From the gross participation income, administration costs and financing costs need to be deducted. The percentage of the net participation income calculated in this way to the total taxable income determines the taxable abatement for the total income tax.

The participation exemption does not lead to an exemption of the capital gain from the tax base but to a reduction of the corporate income tax. From the gross participation income, administration costs and financing costs need to be deducted. The percentage of the net participation income calculated in this way to the total taxable income determines the reduction of the total corporate income tax.

b. Taxable

For individuals holding shares as part of their private wealth, in specific cases the tax authorities requalify a capital gain as taxable income, for example:

- Securities dealer: If the seller qualifies as a professional securities dealer or - according to the Swiss Supreme Court - he/she regularly and systematically deals with securities- the capital gain is subject to Swiss income tax and social security contributions.
- Indirect partial liquidation: The purchase price is financed with the assets of the acquired company. An indirect partial liquidation will be assumed if shares representing at least 20% of the share capital of a company are sold from the private assets of an individual investor to the business assets of a corporate or an individual buyer, and the target company distributes current assets not needed for business operations out of distributable profits or reserves within a period of 5 years after the sale of shares with the cooperation of the seller.
- Transformations: The individual sells his/her shares to a company he/she controls. The consideration qualifies under certain circumstances as taxable income.
- Shell company: A sale of a company, whose assets are in liquid form, is considered as a liquidation which leads to a taxation of the payment of the liquidation proceeds.
- Real estate company: A sale of shares of a real estate company may trigger real estate capital gain taxes.

For individuals holding their assets as business assets, a reduction of 40% - 60% is granted on the taxable capital gain for qualifying participations (participation of at least 10% and a holding period of at least 1 year) depending on the canton involved.

c. Cross Border

In case that the target company is held by shareholders resident in countries where no double tax treaty with Switzerland is in place or only limited reduction of the Swiss withholding is granted and the buyer will have a lower non-recoverable Swiss withholding tax or even a zero rate, the so-called "old reserve practice" of the Swiss Federal Tax Administration needs to be considered. Existing distributable liquid assets that are not required for business operations are considered as old reserves ("tainted reserves"; based on the last statutory financial statements). The "contaminated" distributable reserves under the so-called "old-reserves" doctrine will be subject to a non-refundable withholding tax (between 5% - 35% depending on the previous shareholders) upon distribution or post transaction as if the seller would have distributed them pre transaction.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or territorial tax system

Switzerland applies the worldwide tax system: Swiss resident companies are subject to corporate income tax on their worldwide income, with the exception of income from a business, permanent establishment or immovable property located abroad.

b. CFC Regime

Switzerland does not have any CFC Regimes.

c. Foreign branches and partnerships

The income of a Swiss company which is to be attributed to its foreign branches or partnership (which qualifies as a foreign branch or foreign enterprise) is exempted from income tax (exemption method).

d. Cash Repatriation

Dividend distributions from a qualifying foreign participation (minimal interest of 10% or minimal fair market value of CHF 1 million) are tax-exempt to the extent that it qualifies for the participation exemption. Participation exemption under Swiss tax law does not require a minimal taxation at the level of then foreign participation.

Interest income or intercompany payments like management fees are subject to ordinary corporate taxation.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

A capital gain on immovable property as a business asset is subject to ordinary income tax at federal level, and depending on the canton subject to income tax at cantonal level or subject to a separate real estate capital gains tax.

A transfer of shares of a company whose main assets are real estate may be subject to real estate capital gains tax. This is dependent on the canton where the real estate property is located. Depending on the cantonal laws at the location of the property, the transfer of shares may also attract a real estate transfer tax on the property's transaction price (the tax is normally due by the buyer). In general, an economic transfer of real estate property in a sale of shares is deemed taxable if all of the following conditions are met:

- The owner holds real estate property in Switzerland indirectly through a corporation
- The owner transfers major parts of the shares in the real estate corporation (i.e generally more than 50%) to a new shareholder
- The new shareholder obtains by the acquisition of the shares the economic power of control on the real estate

In international transactions some of the double tax treaties provide for treaty protection for real estate capital gains in share deals with a Swiss real estate corporation.

b. CbC and Other Reporting Regimes

The legal framework for the implementation of the exchange of the Country-by-Country Report, including the Competent Authority Agreement on the Exchange of Country-by-Country Reports ("CBC MCAA") and the respective Federal Act on the International Automatic Exchange of Country-by-Country Reports of Multinationals, entered into force on 1 December 2017. In Switzerland, multinationals with consolidated group revenues of more than CHF 900 million are required to file a CbC report with respect to the fiscal year beginning on or after 1 January 2018 within 12 months after fiscal year end. The first exchange of CbC reports between Switzerland and its partner states will take place during the first half of 2020.

10. TRANSFER PRICING

Switzerland has not implemented specific transfer pricing provisions in Swiss tax law. Swiss tax practice usually follows the relevant OECD transfer pricing guidelines. The arm's length principle is recognised and has been confirmed in several court decisions.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

In Swiss tax practice, hybrid entities are rarely used.

b. Use of Hybrid Instruments

In Swiss tax practice, hybrid instruments are rarely used. In particular, participation exemption is not granted for dividend income which is tax deductible at the level of the distribution entity.

c. Principal/Limited Risk Distribution or Similar Structures

Also after the tax reform and the abolishment of certain tax regimes Switzerland is an attractive location for the centralisation of business and functions. In order to be competitive, the cantons have reduced their ordinary corporate income tax rates. In most of the cantons the effective corporate income tax rate are between 12%-15%.

d. Intellectual property (licensing, transfers, etc.)

Also after the tax reform and the abolishment of certain tax regimes Switzerland is an attractive location for the centralisation of intellectual property. In order to be competitive, the cantons have reduced their ordinary corporate income tax rates. In most of the cantons the effective corporate income tax rate are between 12%-15%. With the patent pox the effective corporate income tax rate can be further reduced. Please see the following Section 11.e.

e. Special tax regimes

With the tax reform a patent box has been introduced at cantonal level. With this patent box, the net profit attributable to patents and comparable rights will be taxed at the ratio of the qualifying research and development expenditure to the overall research and development expenditure per patent or comparable right (nexus quotient) with a maximum reduction of 90%.

12. OECD BEPS CONSIDERATIONS

Switzerland implements the minimal standards according to the OECD BEPS Project (i.e nexus approach for IP boxes, abolishment of harmful tax practice, exchange of information on tax rulings, anti-abuse provisions in double taxation agreements and Country-by-Country-Report) as well as optional recommendations if they are implemented by a large number of countries.

Switzerland introduced into domestic legislation the mandatory minimum standard for a spontaneous exchange of information on tax rulings as per 1 January 2017. The implementation has taken place by way of a revision of the Federal Act on International Administrative Assistance in Tax Matters, together with a revision of the Federal Ordinance on International Administrative Assistance in Tax Matters. The information exchange began a year later on 1 January 2018 and covers tax rulings issued after 1 January 2010 and still be applicable on 1 January 2018 or afterwards.

Regarding the minimal standard for Treaty Abuse according to BEPS Action 6, Switzerland supports the principal purposes test ("PPT" rule). Double tax treaties being recently signed by Switzerland already include the PPT rule in accordance with BEPS Action 6. In the future, Switzerland will implement the new anti-abuse rules either by the new multilateral instrument according to BEPS Action 15 or by a revision of the existing double tax treaties.

Switzerland signed the multilateral instrument according to BEPS Action 15 (BEPS convention) on 7 June 2017, and the Parliament approved it on 22 March 2019. The BEPS convention entered into force on 1 December 2019. With the BEPS convention, Switzerland will implement the BEPS minimum standards only. This includes the preamble of the double taxation agreement in terms of purpose, the application of the PPT rule and the dispute settlement provisions.

13. ACCOUNTING CONSIDERATIONS

a. Combinations

For a tax-neutral combination the assets and liabilities need to be transferred at book value in accordance with the general accounting provisions of the Swiss Code of Obligations. The combination is retroactively accepted provided that the application for the entry of the combination is filed with the register of commerce within 6 months after the balance closing date.

b. Divestitures

For a tax-neutral divestiture the assets and liabilities need to be transferred at book value in accordance with the general accounting provisions of the Swiss Code of Obligations. The divestiture is retroactively accepted provided that the application for the entry of the combination is filed with the register of commerce within 6 months after the balance closing date.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

Additional distributable reserves can be generated with an intra-group transfer of a participation at fair market value for which the realised capital gain benefits from the participation exemption. The reserves can then be distributed to the acquisition vehicle.

b. Substance Requirements for Recipients

In order to qualify for treaty relief on outbound dividends (reduction of the Swiss withholding tax on dividends), the Swiss Federal Tax Administration ("SFTA") developed certain criteria which are to be met. For a foreign holding company, the SFTA requires that the equity capitalisation of the direct foreign parent company should be at least 30% of the book value of the participations held. Furthermore, in general, the foreign parent company should hold further investments in addition to the Swiss company and have minimal physical substance at its place of residence (e.g. office, employees, board members with local residence). Ultimately, the SFTA bases its judgment on the overall facts and circumstances.

c. Application of Regional Rules

Article 9 of the Agreement between the European Union and the Swiss Confederation regarding the automatic exchange of information on financial accounts provides for a 0% rate on dividend payments from a Swiss participation to an EU parent company and a 0% rate on interest payments between associated companies, if the participation respectively the associated company amounts to at least 25% and a holding period of at least 2 years is met.

d. Tax Rulings and Clearances

Advance rulings are playing an important role in Swiss tax practice, in particular with respect to tax neutral reorganisations or tax-free capital gains. An advance ruling is binding for the tax authorities provided all the relevant facts have been disclosed.

15. MAJOR NON-TAX CONSIDERATIONS

Switzerland offers legal certainty and a business friendly environment and thus is an attractive place for business.

16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote
Albania	15 / 5	5	0	[1] [2]
Algeria	15 / 5	10	0	[1] [2]
Argentina	15 / 10	12	0	[1] [2]
Armenia	15 / 5	10	0	[1] [2]
Australia	15 / 5 / 0	10 / 0	0	[1] [2]
Austria	15 / 0	0	0	[1] [2] [3]
Azerbaijan	15 / 5	10	0	[1] [2]
Bangladesh	15 / 10	10	0	[1] [2]
Belarus	15 / 5	8	0	[1] [2]
Belgium	15 / 0	10	0	[1] [2] [3]
Bulgaria	10 / 0	5 / 0	0	[1] [2] [3]
Canada	15 / 5 / 0	10	0	[1] [2]
Chile	15	10 / 5	0	[1] [2]
China	10 / 5	10	0	[1] [2]
Columbia	15 / 0	10	0	[1] [2]
Croatia	15 / 5	5	0	[1] [2] [3]
Cyprus	15 / 0	0	0	[1] [2] [3]
Czech Republic	15 / 0	0	0	[1] [2] [3]
Denmark	15 / 0	0	0	[1] [2] [3]
Ecuador	15	10	0	[1] [2]
Egypt	15 / 5	15	0	[1] [2]
Estonia	10 / 0	0	0	[1] [2] [3]
Finland	10 / 0	0	0	[1] [2] [3]
France	15 / 0	0	0	[1] [2] [3]
Georgia	10 / 0	0	0	[1] [2]
Germany	15 / 0	0	0	[1] [2] [3]
Ghana	15 / 5	10	0	[1] [2]
Greece	15 / 5 / 0	7	0	[1] [2] [3]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote
Hong Kong	10 / 0	0	0	[1] [2]
Hungary	15 / 0	0	0	[1] [2] [3]
Iceland	15 / 0	0	0	[1] [2]
India	10	10	0	[1] [2]
Indonesia	15 / 10	10	0	[1] [2]
Iran	15 / 5	10	0	[1] [2]
Ireland	15 / 0	0	0	[1] [2] [3]
Israel	15 / 5	10	0	[1] [2]
Italy	15	12.5	0	[1] [2] [3]
Ivory Coast	15	15	0	[1] [2]
Jamaica	15 / 10	10	0	[1] [2]
Japan	15 / 5 / 0	10	0	[1] [2]
Kazakhstan	15 / 5	10	0	[1] [2]
Korea (South)	15 / 5	10	0	[1] [2]
Kosova	15 / 5	5	0	[1] [2]
Kuwait	15	10	0	[1] [2]
Kyrgyzstan	15 / 5	5	0	[1] [2]
Latvia	15 / 0	5	0	[1] [2] [3]
Liechtenstein	15 / 0	0	0	[1] [2]
Lithuania	15 / 5	10	0	[1] [2] [3]
Luxembourg	15 / 5 / 0	10	0	[1] [2] [3]
Macedonia	15 / 5	10	0	[1] [2]
Malaysia	15 / 5	10	0	[1] [2]
Malta	15 / 0	10 / 0	0	[1] [2] [3]
Mexico	15 / 0	10 / 5	0	[1] [2]
Moldava	15 / 5	10	0	[1] [2]
Mongolia	15 / 5	10	0	[1] [2]
Montenegro	15 / 5	10	0	[1] [2]
Morocco	15 / 7	10	0	[1] [2]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote
Netherlands	15 / 0	0	0	[1] [2] [3]
New Zealand	15	10	0	[1] [2]
Norway	15 / 0	0	0	[1] [2]
Oman	15 / 5	5 / 0	0	[1] [2]
Pakistan	20 / 10	10	0	[1] [2]
Peru	15 / 10	10	0	[1] [2]
Philippines	15 / 10	10	0	[1] [2]
Poland	15 / 0	5	0	[1] [2] [3]
Portugal	15 / 0	10	0	[1] [2] [3]
Qatar	15 / 0	0	0	[1] [2]
Romania	15 / 0	5	0	[1] [2] [3]
Russia	15 / 5	0	0	[1] [2]
Serbia	15 / 5	10	0	[1] [2]
Singapore	15 / 5	5	0	[1] [2]
Slovakia	15 / 0	5 / 0	0	[1] [2] [3]
Slovenia	15 / 0	5	0	[1] [2] [3]
South Africa	15 / 5	5	0	[1] [2]
Spain	15 / 0	0	0	[1] [2] [3]
Sri Lanka	15 / 10	10	0	[1] [2]
Sweden	15 / 0	0	0	[1] [2] [3]
Taiwan	15 / 10	10	0	[1] [2]
Tajikistan	15 / 5	10	0	[1] [2]
Thailand	15 / 10	15	0	[1] [2]
Trinidad and Tobago	20 / 10	10	0	[1] [2]
Tunisia	10	10	0	[1] [2]
Turkey	15 / 5	15 / 10	0	[1] [2]
Turkmenistan	15 / 5	10	0	[1] [2]
Ukraine	15 / 5	10	0	[1] [2]
United Arab Emirates	15 / 0	0	0	[1] [2]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote
United Kingdom	15 / 0	0	0	[1] [2] [3]
United States	15 / 5	0	0	[1] [2]
Uruguay	15 / 5	10	0	[1] [2]
Uzbekistan	15 / 5	5	0	[1] [2]
Venezuela	10 / 0	5	0	[1] [2]
Vietnam	15 / 7	10	0	[1] [2]
Zambia	15 / 0	10	0	[1] [2]

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Footnotes	
1	According to domestic Swiss tax law interests are only subject to Swiss witholding tax on bonds and bank deposits and on interests if the loan is secured by Swiss real estate
2	According to domestic Swiss tax law royalty payments are not subject to Swiss withholding tax
3	Article 9 of the Agreement between the European Union and the Swiss Confederation regarding the automatic exchange of information on financial accounts provides for a 0% rate on dividend payments from a Swiss participation to an EU parent company and a 0% rate on interest payments between associated companies, if the participation respectively the associated company amounts to at least 25% and a holding period of at least 2 years is met

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

No.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Tax contact person available to discuss tax matters
2	Tax Due Diligence	General	A current organisation chart, including all entities by full legal name, jurisdiction, date and place of formation, entity type, class of shares, and ownership percentages. Include a full history of each entity in the structure.
3	Tax Due Diligence	General	A summary of all audits (including status) for any tax, including corporate tax, withholding tax, stamp duty, wage withholding tax, VAT. Provide all significant audit correspondence in the last seven years
4	Tax Due Diligence	General	Details of any preliminary restructuring in the last five years
5	Tax Due Diligence	General	Documentation regarding acquisition and/or disposal of qualifying participations in the past 5 years (including acquisition costs / impairment of participations / value increasing investments / statutory book values / fair market values / sales proceeds / other information if relevant)
6	Tax Due Diligence	General	Overview of transactions with own shares in the last 5 years
7	Tax Due Diligence	General	Tax rulings with tax authorities / other documentation of negociations / agreements with tax authorites
8	Tax Due Diligence	General	Information regarding pending disputes with federal and/or cantonal/communal tax authorities
9	Tax Due Diligence	General	Information regarding open requests of federal and / or cantonal / communal tax authorities
10	Tax Due Diligence	General	Relevant correspondence with Swiss tax authorities of last 5 years
11	Tax Due Diligence	General	Any relevant correspondence over the last 5 years with the external tax advisors
12	Tax Due Diligence	General	Detailed statutory financial statements of the last seven years
13	Tax Due Diligence	General	Minutes of shareholder assemblies for the last seven years
14	Tax Due Diligence	General	All shareholders since incorporation (incl. changes), share register and beneficial owners
15	Tax Due Diligence	Corporate income tax	Copies of tax return for the last five years

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No.	Category	Sub-Category	Description of Request
16	Tax Due Diligence	Corporate income tax	Final and provisional tax assessements and tax bills for the last five years
17	Tax Due Diligence	Corporate income tax	Details re provisions, accruals and deferrals
18	Tax Due Diligence	Corporate income tax	Details and overview of depreciations
19	Tax Due Diligence	Corporate income tax	Detailed calculation of tax provisions including an overview of tax payments per tax period
20	Tax Due Diligence	Corporate income tax	Overview of Target's permanent establishments in foreign jurisdictions
21	Tax Due Diligence	Corporate income tax	Information regarding Target's activities performed abroad in the past 5 years (representation offices / sales offices / agents / employees working (partially) abroad / other information if relevant)
22	Tax Due Diligence	Transfer Pricing	A schedule of related party transactions including the amounts and description of each, to the extent not reflected in the financial statements
23	Tax Due Diligence	Transfer Pricing	Transfer pricing study / documentation for the last 5 years
24	Tax Due Diligence	Transfer Pricing	Agreements with group companies and / or related parties
25	Tax Due Diligence	Witholding tax	Withholding tax (WHT) forms filed with federal tax administration for FY10-FY17 (in particular Forms 102 / 103 / 105 / 106 / 108 / 110 / 112 /other if relevant) for the last seven years
26	Tax Due Diligence	Witholding tax	Overview of distributions to shareholders in the past 7 years (ordinary and extraordinary dividend, hidden profit distributions, etc.), including decisions of the general assembly regarding dividend distributions
27	Tax Due Diligence	Witholding tax	Confirmations for notification procedure based on Forms 823, 823B or 823C
28	Tax Due Diligence	Witholding tax	Confirmations for capital contribution reserves based on Form 170
29	Tax Due Diligence	Stamp duty	Stamp duty declarations filed with the federal tax administration for the last seven years (in particular Form 3 / 4 / 9 / securities dealer registration form / other if relevant)
30	Tax Due Diligence	Stamp duty	Securities transfer tax register for the last seven years
31	Tax Due Diligence	VAT	Quarterly VAT declarations for the last five years

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No.	Category	Sub-Category	Description of Request
32	Tax Due Diligence	VAT	Annual turnover reconciliations for the last five years
33	Tax Due Diligence	VAT	Information on any foreign VAT registrations (if any) and copies of foreign VAT returns for the last five years
34	Tax Due Diligence	VAT	Information on any input tax corrections and details of the calculation
35	Tax Due Diligence	VAT	Information on VAT audits (including copies of the VAT audit returns)
36	Tax Due Diligence	VAT	Information on VAT and real estates (if any) - Use of immovable property etc.
37	Tax Due Diligence	VAT	Information on any Notification procedures (Meldeverfahren) made during the last five years
38	Tax Due Diligence	Wage withholding tax	Tax returns for wage withholding tax
39	Tax Due Diligence	Wage withholding tax	Information and documentation on employees subject to wage withholding tax, including information on salary, civil status, canton of domicile, kind of residency permit
40	Tax Due Diligence	Wage withholding tax	Information and documentation on closed, pending and forthcoming source tax audits

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FOR MORE INFORMATION CONTACT:

Alberto Lissi
+41 44 215 77 06
alberto.lissi@taxpartner.ch

Oliver Jäggi
+41 44 215 77 41
oliver.jaeggi@taxpartner.ch