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Treasury Shares: Key Update from the Swiss Federal Tax Administration

On 5 November 2026, the Swiss Federal Tax Administration (**SFTA**) published Circular Letter No. 51 on the tax treatment of treasury shares (**Circular Letter 51**). Replacing Circular Letter No. 5 of 19 August 1999, the new guidance reflects legislative changes and developments in the relevant case law over the past 27 years. It provides updated guidance on the Swiss tax treatment of the acquisition and disposal of treasury shares and clarifies various important tax implications for Swiss companies and their shareholders.

Under Swiss corporate law, a company may generally acquire its own shares up to a maximum of 10% of its share capital. In certain circumstances, particularly where registered shares are acquired in connection with restrictions on their transferability, this threshold may be increased to 20%.

From a tax perspective, the acquisition and subsequent disposal of treasury shares are subject to additional requirements, including specific holding periods. Acquisitions exceeding the applicable corporate law limits may trigger withholding tax consequences on the level of the acquiring company and, where the selling shareholder is an individual, income tax consequences in the form of taxable liquidation income. Where acquisitions remain within the applicable limits, the tax treatment generally depends on whether the treasury shares are resold within the applicable six-year period. Under certain conditions, this period may be suspended in connection with specific financing transactions, such as convertible or option bonds, or employee participation plans. As a result, the applicable period may be extended up to twelve years or, in certain cases, even longer.

Circular Letter 51 provides updated guidance on the accounting and tax treatment of treasury shares, focusing in particular on withholding tax, direct federal income tax and stamp duties. The key aspects of the revised guidance and their practical implications are summarised below.



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1. Accounting treatment and tax classification of treasury shares

Under the revised Swiss accounting rules, treasury shares must be recognised as negative equity measured at cost rather than as an asset on the balance sheet. The negative equity item in question will be adjusted only upon the acquisition, reissue or cancellation of treasury shares, in each case by reference to their acquisition cost. Subsequent changes in the market value of treasury shares are not reflected in the financial statements.

In its decision of 6 June 2024 (9C_135/2023), the Swiss Federal Supreme Court confirmed the tax implications of this accounting treatment for corporate income tax purposes. It held that the acquisition of treasury shares were to be treated as a capital reduction as treasury shares do not constitute an effective asset of the company. Accordingly, the subsequent reissue of treasury shares will be treated as a tax-neutral capital contribution for corporate income tax purposes.

2. Swiss witholding tax

2.1. Acquisition of treasury shares

For withholding tax purposes, the acquisition of treasury shares is generally treated as a partial liquidation. Withholding tax will fall due immediately if the acquisition is made with a view to a capital reduction or exceeds the applicable limits under Swiss corporate law. If the acquisition is not initially intended to finance a capital reduction, but the company subsequently resolves to reduce its capital, the corresponding withholding tax liability will arise once the relevant corporate resolution has been adopted.

Where neither of these circumstances applies, the acquisition of treasury shares is generally subject to a six-year holding period. If the company does not resell the treasury shares within this period, a partial liquidation will be deemed to occur upon expiry of the six-year period. This rule applies to treasury shares representing up to 10% of the share capital. The first-in, first-out (**FIFO**) principle applies when determining which treasury shares are deemed to have been acquired first. Where the acquisition exceeds the 10% threshold under the special exceptions permitted by Swiss corporate law, the shares acquired in excess of this threshold must generally be resold or reissued within two years to avoid any withholding tax consequences.

If the company acquires its own shares at a price above their market value, the excess amount will be treated as a hidden distribution and therefore be subject to withholding tax.

Circular Letter 51 also clarifies the rules for treasury shares acquired in connection with convertible or option bonds and employee participation plans. In such cases, the six-year resale period may be suspended, subject to certain conditions. The treasury shares in question must have been acquired for the relevant arrangement from the outset and be separately identifiable in the company's accounts. Shares initially acquired for another purpose cannot subsequently be reallocated to benefit from this treatment.

An exception to the corporate law acquisition limits applies where the resale of the treasury shares is legally secured at the time of acquisition and the company does not bear any price risk in the interim. In these circumstances, the acquisition will be treated as a mere pass-through transaction and will not count towards the applicable acquisition limits.

Circular Letter 51 also addresses specific scenarios involving the acquisition of treasury shares under a capital band and by companies listed on a Swiss stock exchange. In particular, it sets out special rules governing the withholding tax treatment of such acquisitions and the allocation of any liquidation surplus to capital contribution reserves. For listed companies, the requirement to allocate at least 50% of the liquidation surplus to capital contribution reserves applies irrespective of whether the shares are repurchased through a second trading line.

Furthermore, the acquisition of treasury shares through a directly or indirectly controlled subsidiary is treated in the same way as a direct acquisition by the parent company in accordance with Article 659b of the Swiss Code of Obligations. The parent company is therefore the relevant taxpayer for withholding tax

purposes.
The taxable amount generally corresponds to the difference between the acquisition price and the paid-up nominal value of the acquired shares, taking into account any relevant capital contribution reserves.

2.2. Reissue of treasury shares

As a general rule, the reissue of treasury shares does not give rise to tax-recognised capital contribution reserves. However, where the original acquisition has already triggered an immediate or deferred partial liquidation, the portion of the reissue proceeds exceeding the nominal value may qualify as capital contribution reserves, to the extent that it can be charged to other reserves.

Circular Letter 51 also clarifies the withholding tax treatment of treasury shares reissued below market value or nominal value. Where the original acquisition has not already triggered an immediate or deferred partial liquidation, the reissue of treasury shares to a shareholder or a related party at a price below market value may give rise to a hidden distribution subject to withholding tax. Where the original acquisition has already triggered such a partial liquidation, a reissue below the paid-up nominal value may give rise to a hidden distribution to the extent of the difference.

2.3. Right to reclaim withholding tax

The right to reclaim withholding tax generally rests with the original seller of the treasury shares. The relevant requirements for reclaiming withholding tax, including the applicable residence or registered office requirements and the seller's right to use the relevant shares, are assessed at the time the withholding tax claim arises. This principle is also applicable to withholding tax claims arising on expiry of the six-year holding period.

2.4. Transfer of registered office to and from Switzerland

Circular Letter 51 equally clarifies the withholding tax consequences of the immigration and emigration of companies holding treasury shares.

Where a foreign company transfers its registered office to Switzerland, the prior acquisition of treasury shares does not trigger Swiss withholding tax, the relevant partial liquidation and resulting reduction in the company's assets having taken place abroad. Accordingly, the six-year holding period is not relevant in this context. However, any treasury shares acquired before the transfer must be taken into account when determining the applicable acquisition limits under Swiss law for any subsequent acquisitions. Moreover, they must be separately recorded or otherwise appropriately documented.
Conversely, where a Swiss company transfers its registered office abroad, any due withholding tax must be settled upon the transfer on the difference between the market value and the nominal value of the treasury shares, taking into account any relevant capital contribution reserves.

3. Direct federal income tax

For corporate income tax purposes, the acquisition of treasury shares generally has no tax consequences for the acquiring company. Any changes in the value of the respective treasury shares during the holding period are disregarded for tax purposes.

Upon reissue, any resulting gain will be treated as a tax-neutral capital contribution pursuant to Article 60(a) of the Federal Direct Tax Act (**FDTA**). Conversely, any loss recognised in the income statement must be added back to the taxable profit since it does not constitute a tax-deductible business expense.

The tax consequences for the selling shareholder depend on whether the relevant treasury shares form part of the shareholder's private or business assets.

Where the shares form part of the shareholder's private assets, an acquisition in connection with a capital reduction or in excess of the applicable limits under Swiss corporate law generally results in taxable income from movable assets in the form of a liquidation dividend. The taxable amount corresponds to the difference between the sale price and the aggregate of the nominal value of the shares and any relevant capital contribution reserves. The partial taxation rules under Article 20(1bis) of the Federal Direct Tax Act may apply, provided that the statutory requirements are met.

If the acquisition remains within the statutory limits and the company resells the treasury shares within the relevant period (generally six years for tax purposes), the original seller will realise a tax-free private capital gain. If the company does not resell the treasury shares within this period, the initially tax-free private capital gain will subsequently be reclassified as taxable income from movable assets in the form of a liquidation dividend, calculated as described above. Where the shares form part of the shareholder's business assets, the difference between the sale proceeds and the lower income tax value of the shares is generally treated as a distribution. The partial taxation rules under Article 18b FDTA may apply, provided that the statutory requirements are met.

Where the selling shareholder is a corporate entity, the proceeds from the sale are treated as a distribution. The participation relief under Articles 69 et seq. FDTA may apply, provided that the relevant requirements are met.

Finally, Circular Letter 51 addresses the income tax consequences of transactions involving treasury shares carried out at non-market prices. Where a company acquires treasury shares above their fair market value, the excess generally constitutes a taxable benefit for the selling shareholder. Conversely, where treasury shares are reissued below their fair market value due to the shareholder relationship, the difference generally constitutes a taxable benefit for the acquiring shareholder unless the original acquisition already triggered an immediate or a deferred partial liquidation. Should such a partial liquidation have been triggered, a taxable benefit may arise if the shares are subsequently reissued below their paid-in nominal value to a shareholder acquiring them as private assets.

4. Stamp duties

In the absence of any new funds received by the company, the acquisition of treasury shares does not generally trigger issuance stamp duty. Similarly, the reissue of treasury shares is not generally subject to issuance stamp duty. However, where treasury shares are reissued to a shareholder at a price exceeding their fair market value, the excess may qualify as a hidden capital

contribution and therefore trigger issuance stamp duty.

Securities transfer tax may arise on both the acquisition and reissue of treasury shares if a Swiss securities dealer is involved in the transaction, either as a party or as an intermediary. An exemption applies to the acquisition of treasury shares for the purpose of a capital reduction, provided that the shares are subsequently cancelled under civil law. The transfer of treasury shares held in reserve is also exempt where it takes place as part of the issuance transaction.

5. Practical implications for companies

Circular Letter 51 applies to all tax assessments that were still open on the date of its publication and replaces Circular Letter No. 5 of 19 August 1999.

The Federal Supreme Court decision of 6 June 2024, together with the corresponding update to the SFTA Circular Letter, is to be welcomed. It clarifies, inter alia, that even if the reissue of treasury shares results in a positive difference between the acquisition cost and the reissue price, such a difference cannot automatically be qualified as taxable income, no income being realised. This clarification is particularly relevant in the context of transactions and the restructuring or clean-up of treasury shareholdings.

Companies holding or planning to acquire treasury shares should review their existing arrangements in the light of the updated guidance. In particular, they should verify that their acquisition and holding practices comply with the applicable corporate law limits and that the generally applicable six-year holding period for tax purposes, subject to certain exceptions, is properly monitored. Companies acquiring treasury shares in connection with convertible or option bonds or employee participation plans should also ensure that the required link to the relevant arrangement is established from the outset and appropriately documented.

Companies should further review their accounting and tax reporting processes to ensure that acquisitions, holdings and reissues of treasury shares are correctly recorded and that the relevant tax treatment can be substantiated. Particular attention should be paid to treasury shares held over an extended period, transactions involving shareholders or related parties as well as reissues at prices differing from the corresponding fair market value.

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