February 2022

Newsletter No. 162

Swiss electorate rejects planned abolition of stamp duty on companies

On 13 February 2022, the people of Switzerland rejected the governmental and parliament backed changes to the stamp duty law that would have abolished the existing 1% issuance stamp duty charged on capital contributions to Swiss companies. The margins of the vote's rejection were disappointingly clear, with 62.7 percent of voters against and 37.3 percent of voters in favour of the proposal.

walderwyss attorneys at law

Swiss electorate rejects planned abolition of stamp duty on companies

By Maurus Winzap
lic. iur., LL.M., Attorney at Law /
Certified Tax Expert
Partner
Telephone +41 58 658 56 05
maurus.winzap@walderwyss.com

and Fabienne Limacher
MLaw, LL.M., Certified Tax Expert,
Attorney at Law
Partner
Telephone +41 58 658 52 81
fabienne.limacher@walderwyss.com

What was the vote about?

In Switzerland, 1% issuance stamp duty is levied on capital contributions from shareholders to Swiss companies, comprising the initial creation and subsequent increases of share capital as well as contributions without any issuance of shares. This stamp duty curbs capital injections as these costs induce shareholders to finance Swiss companies through shareholder loans. Such a financing strategy turns out to be especially harmful in an economic crisis.

Against this backdrop, and in order to eliminate a competitive disadvantage compared with rival centres, which do not have comparable taxes, on 2 June 2021, the Council of States of Parliament followed the decision taken by the National Council in 2013 and approved the long-overdue abolition of issuance stamp duty on equity. However, a left-wing political committee collected the 50,000 signatures necessary to hold a national referendum and cleared the way for a nationwide vote on the subject.

What is happening now?

Under the current legal framework, which now remains unchanged, there are still various ways of lowering or avoiding said 1% issuance stamp duty charged on equity capital. One way typically chosen is to fund Swiss companies through shareholders' interest-bearing or interest-free loans, which do not attract issuance stamp duty. However, interest payments increase complexity on account of the thin cap and maximum interest rules and the respective transfer pricing issues.

Due to the formal nature of the Swiss issuance stamp duty, it is levied only in the event of a contribution by a direct shareholder. As a result, issuance stamp duty may be avoided if the contribution is made by an affiliated company that is not the direct shareholder. In practice, Swiss companies are often equity financed by indirect contributions (so-called 'grandparent contributions'). However, depending on the current group structure, this may lead to higher compliance costs and, unless structured carefully, some inefficiencies when extracting funds out of Switzerland by way of dividends subject to Swiss withholding tax.

In a recent ruling of 29 November 2021 (A-5073/2020), the Swiss Federal Administrative Court adopted a welcome change to the long-standing practice of the Swiss Federal Tax Administration (SFTA) according to which distressed Swiss companies had to choose between making use of the stamp duty restructuring relief or creating withholding tax-free repayable capital contribution reserves when receiving fresh capital from their direct shareholders. This decision now remains of utmost importance when dealing with restructurings of financially distressed companies and its tax consequences and avoiding issuance stamp duty leakage.

Comment

The abolition of the Swiss issuance stamp duty would have clearly been a welcome measure to strengthen the decision-making neutrality of the tax system and favoured the creation of new equity capital when doing business and investing in Switzerland. At any rate, bigger corporate groups and financially distressed companies still have various means and ways of lowering or avoiding said 1% issuance stamp duty on equity capital through careful structuring. Yet, for the start-up, early stage and private equity industries, having to pay stamp duty often remains burdensome.