

Tax Newsletter

New Swiss Step-up upon Migration As from January 1, 2020, foreign companies may take advantage of a tax-neutral step-up of built-in gains (including self-created goodwill) to fair market value for Swiss direct tax purposes when relocating their legal seat, effective place of management or assets, business units and functions from abroad to Switzerland. The disclosed built-in gains may be depreciated tax-effectively over a specified time period, allowing the Swiss company or branch to significantly reduce its tax burden during the respective time frame.



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The new step-up upon migration is an attractive instrument alongside various other tax measures such as the patent box or the R&D super deduction introduced with the implementation of the Swiss corporate tax reform on January 1, 2020, and it contributes substantially to preserve and enhance Switzerland's international attractiveness as a business location.

1. Key Features of the Step-up upon Migration

1.1 Scope of Application

1.1.1 In General

The new step-up upon migration allows for a tax-neutral disclosure of built-in gains (including self-created goodwill) for Swiss direct federal and cantonal/municipal tax purposes upon a foreign corporation's:

- transfer of its assets, business units or functions to a Swiss legal entity or a Swiss branch office, or
- transfer of its statutory seat or its place of effective management to Switzerland.

The Swiss step-up upon migration is applicable regardless of whether an exit taxation is triggered in the foreign jurisdiction following a company's relocation or transfer of its assets to Switzerland. Further, the disclosure of the built-in gains is generally limited to the tax accounts and is not necessarily presented in the statutory financial statements, if permissible at all under commercial law.

1.1.2 Specific Cases

1.1.2.1 Transfer Pricing Adjustments

Given its broad scope, the step-up upon migration is available irrespective of the legal form of the transfer of assets to Switzerland (e.g. sale or contribution) and, as a consequence, may apply even in the event that transfer pricing adjustments are made. For instance, if a Swiss entity acquires goods from a foreign group entity below the arm's length price (acquisition price) and resells the respec-

tive goods at market price to a third party (reselling price) within the same business year, it will be given the option of disclosing the difference between the acquisition price and the arm's length price in a tax-neutral manner. As a result, only the difference between the reselling price and the arm's length price will be subject to taxation in Switzerland. As some details remain unanswered, it is expected that the tax authorities will evolve their practice and further define the scope and modalities of a step-up in the context of such transfer pricing adjustments.

1.1.2.2. Qualifying Participations

While built-in gains on investments and participations below 10% may be disclosed under the new step-up regime, such a disclosure is not possible with regard to participations in Swiss or foreign companies of at least 10% since capital gains derived from the sale of such participations are already virtually tax-exempt due to the Swiss participation relief.

1.1.3. Valuation Method

Swiss law does not stipulate a specific valuation method for determining the amount of the built-in gains and self-created goodwill upon relocation to Switzerland. Rather, any recognized valuation method may be chosen. In practice, it is advisable to agree a recognized valuation method with the competent tax authority prior to the relocation to Switzerland in order to have legal certainty in this regard.

Further, it needs to be noted that the method chosen for determining the fair market value upon relocation to Switzerland is also applicable for establishing the exit tax in case the given company decides to leave Switzerland or to transfer a part of its activities and functions abroad.

1.2. Tax-effective Depreciation of the Step-up

Following the relocation, the disclosed built-in gains may be depreciated tax-effectively throughout the amortization period pertaining to the individual assets or over a period of 10 years in the event of self-generated goodwill, respectively.

In the event that the depreciations exceed the taxable income in a given year and a tax loss results, such a tax loss may be carried forward and offset against any taxable income generated in the next seven years.

As a result, only built-in gains and goodwill created under Swiss tax sovereignty are subject to Swiss corporate income tax upon realization at an effective ordinary tax rate ranging between 12% to 22%, depending on where the company or branch is located.

2. Tax Optimization of Cross-Border Payments

Effective and constructive dividend distributions made by a Swiss resident entity to its shareholders are subject to Swiss withholding tax at a rate of 35%. While the Swiss withholding tax will be refundable or creditable in full to a Swiss tax resident corporate and individual shareholder if certain requirements are met, it is generally intended as a final tax burden for beneficiaries who are not Swiss resident for tax purposes. However, a full or partial refund will be available if the country in which such a beneficiary is resident for tax purposes has entered into a double tax treaty with Switzerland. In contrast, distributions paid out of capital contributions are not subject to Swiss withholding tax.

Since there is no step-up of the tax base for withholding tax purposes, it may be favorable to create such capital contribution reserves in the framework of the pre-immigration planning in particular in cases where the Swiss withholding tax is not fully refundable under a double tax treaty. This option is particularly paramount in the event of cross-border group reorganizations. For instance, capital contribution reserves may be created by contributing the participation in the foreign entity to be migrated to Switzerland to a newly established Swiss company at fair market value prior to the relocation. Hence, the newly established Swiss company may repay capital contribution reserves in the amount corresponding to the fair market value of the respective participation to its foreign shareholders in the subsequent fiscal years without triggering any Swiss withholding taxes.

The Walder Wyss Newsletter provides comments on new developments and significant issues of Swiss law. These comments are not intended to provide legal advice. Before taking action or relying on the comments and the information given, addressees of this Newsletter should seek specific advice on the matters which concern them.

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