

Tax Newsletter

Switzerland and Brazil sign double taxation agreement Brazil

is the most important trading partner for Switzerland in Latin America, while Switzerland is the sixth largest investor in Brazil. The two countries are now further strengthening their economic ties. On 3 May 2018, Switzerland and Brazil signed a double taxation agreement (DTA), which is a major achievement for both countries and has been a long-standing demand of the private sector. The DTA will significantly increase Switzerland's attractiveness for Latin American investments and provide investors with legal certainty in tax matters.

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Even though Brazil is not (yet) a member state of the Organization for Economic Co-operation and Development (OECD), the DTA has been drafted in line with the recommendations of the OECD and is aligned with the Base Erosion and Profit Shifting (BEPS) actions. Specifically, it provides for anti-abuse provisions, a mutual agreement clause (without containing an arbitration clause) as well as an exchange of tax information upon request in accordance with the current international standard.



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



and **Martin Busenhart**
lic. iur., Certified Tax Expert
Telephone +41 58 658 55 80
martin.busenhart@walderwyss.com

The DTA, of course, includes typical provisions to facilitate international cross-border investments and financial transactions:

- The residual withholding tax on dividends is limited to 10% under the DTA, if an interest of at least 10% has been held directly in the company for at least one year, and 15% in all other cases (please note, however, that profits/dividends distributed to resident or non-resident beneficiaries - individuals and/or legal entities - are generally not subject to IRRF, the Brazilian term for withholding income tax).
 - For interest payments, the residual withholding tax generally amounts to 15% and is 10% for specific bank loans and 0% for certain pension funds and government agencies.
 - As regards royalties, the residual withholding tax is 15% on trademarks and 10% in all other cases.
 - The DTA generally exempts capital gains on the sale of shares (unless real estate companies are involved) in the country where the company is located.
- Based on Article 23 of the DTA, Brazil eliminates any relevant double taxation by applying the credit method, whereas Switzerland applies either the credit or the exemption method, depending on the source of income. In line with the OECD's recommendations, the DTA does not contain any tax sparing or tax matching clauses.
- As a next step, the DTA will need to be approved by the National Congress in Brazil and by the Swiss Parliament. Only once it has been ratified by both countries, will the DTA enter into force. At this stage, it is hard to predict exactly when this will be the case.
- Companies and corporate groups should now start reviewing their structuring opportunities under the DTA, both for existing structures and international expansions. This may also apply to corporate groups with headquarters in third countries, but already substantially operating or planning to substantially operate in both Brazil and Switzerland.

In addition to and in deviation from recent other double taxation agreements entered into by Brazil, the DTA includes the following provisions:

- The DTA explicitly applies to the Brazilian net profit social contribution ("contribuição social sobre o lucro líquido").

Walder Wyss is happy to assist you in this process and is also going to shortly hold a webinar on both the DTA and the upcoming Swiss corporate tax reform.

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.

Our tax team



Martin Busenhart
Partner, Zurich
Phone +41 58 658 55 80
martin.busenhart@walderwyss.com



Samuel Dürr
Partner, Berne
Phone +41 58 658 29 02
samuel.duerr@walderwyss.com



Thomas Meister
Partner, Zurich
Phone +41 58 658 55 73
thomas.meister@walderwyss.com



Stephan Neidhardt
Partner, Zurich
Phone +41 58 658 55 70
stephan.neidhardt@walderwyss.com



Maurus Winzap
Partner, Zurich
Phone +41 58 658 56 05
maurus.winzap@walderwyss.com



Janine Corti
Counsel, Zurich
Phone +41 58 658 56 49
janine.corti@walderwyss.com



Jan Ole Luuk
Counsel, Zurich
Phone +41 58 658 56 12
janole.luuk@walderwyss.com



Peter Hongler
Counsel, Zurich
Phone +41 58 658 56 82
peter.hongler@walderwyss.com



Fabienne Limacher
Managing Associate, Zurich
Phone +41 58 658 52 81
fabienne.limacher@walderwyss.com



Robert Desax
Managing Associate, Zurich
Phone +41 58 658 52 77
robert.desax@walderwyss.com



Marius Breier
Associate, Zurich
Phone +41 58 658 56 58
marius.breier@walderwyss.com



Ursina Gremminger
Associate, Zurich
Phone +41 58 658 52 47
ursina.gremminger@walderwyss.com



Luciano Schmid
Associate, Zurich
Phone +41 58 658 56 30
luciano.schmid@walderwyss.com



Hans-Jürg Schmid
Associate, Zurich
Phone +41 58 658 56 28
hansjuerg.schmid@walderwyss.com

Walder Wyss Ltd.
Attorneys at Law

Phone + 41 58 658 58 58
Fax + 41 58 658 59 59
reception@walderwyss.com

www.walderwyss.com
Zurich, Geneva, Basel, Berne, Lausanne, Lugano