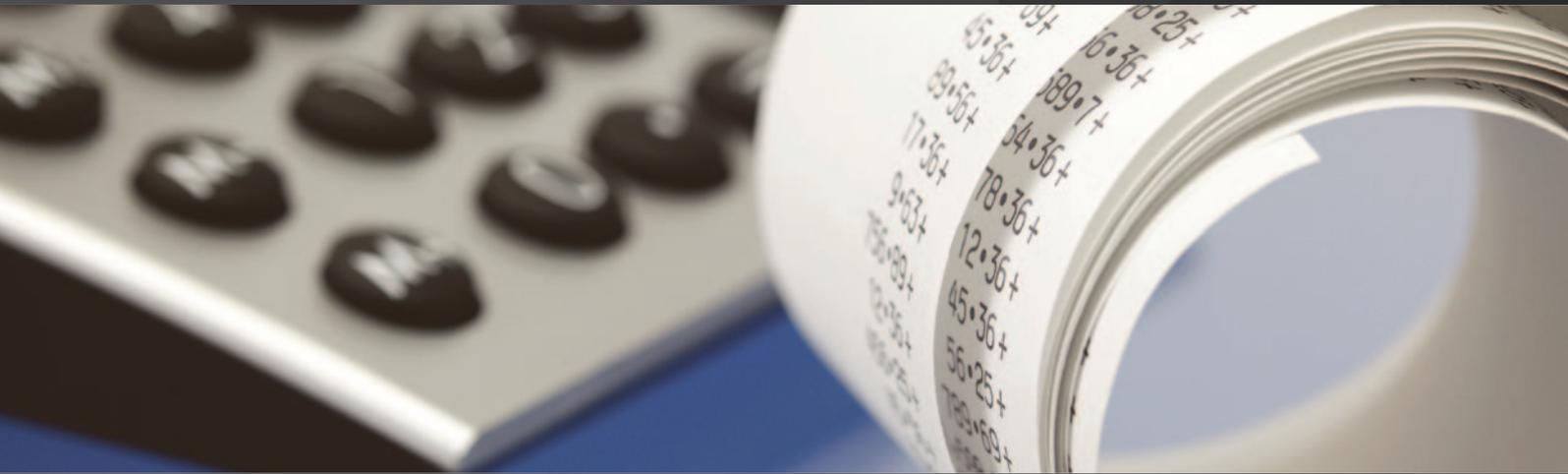


International Comparative Legal Guides



Corporate Tax 2020

A practical cross-border insight to corporate tax law

16th Edition

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ISBN 978-1-83918-015-6
ISSN 1743-3371

Published by

glg global legal group

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London SE1 3PL
United Kingdom
+44 207 367 0720
www.iclg.com

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Printed by
Stephens and George
Print Group

Cover Image
www.istockphoto.com

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Corporate Tax 2020

16th Edition

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1 Tax Treaties and Residence

1.1 How many income tax treaties are currently in force in your jurisdiction?

By September 2019, Switzerland had concluded more than 100 income double tax treaties (“DTT”) and it is striving to further extend its treaty network.

In addition, Switzerland has access to benefits similar to those in the European Union (“EU”) Parent-Subsidiary Directive and the EU Interest and Royalties Directive through the Agreement on the automatic exchange of information (“AEOI”) in tax matters entered into by Switzerland with the European Union (“EU”), which provides for a withholding tax exemption for cross-border payments of dividends, interest and royalties between related entities.

Furthermore, the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“Multilateral Instrument” or “MLI”) that was developed to efficiently implement some of the BEPS measures into the existing networks of bilateral DTTs will enter into force for Switzerland on 1 December 2019. In this respect, it should be noted that the impact on the MLI on Switzerland’s treaty network will be limited as Switzerland intends to implement the BEPS minimum standards by renegotiating its DTTs on a bilateral basis and designated only 12 (out of over 100) treaties that will be amended through the MLI.

1.2 Do they generally follow the OECD Model Convention or another model?

Most of the Swiss DTTs follow the OECD Model Tax Convention on Income and on Capital (“OECD MTC”).

1.3 Do treaties have to be incorporated into domestic law before they take effect?

International treaty provisions become an integral part of Swiss law upon ratification and are automatically valid without any need for any further incorporation into Swiss domestic law.

1.4 Do they generally incorporate anti-treaty shopping rules (or “limitation on benefits” articles)?

In recent years, the treaties entered into by Switzerland have often contained specific anti-treaty shopping or anti-abuse provisions. However, even if a treaty lacks such a provision, a reservation of abuse of rights is inherent in all tax treaties according to the jurisprudence of the Swiss Federal Supreme Court.

Moreover, Switzerland has enacted unilateral measures against the improper use of tax treaties by way of the Anti-Abuse Decree of 1962 and the subsequent circulars issued by the Swiss Federal Tax Administration (“SFTA”). These unilateral rules only apply in the absence of a specific treaty provision to payments made to a Swiss company (i.e. in inbound situations) and are designed to prevent the abuse of Swiss intermediary companies.

Due to the international tax developments and following the signing of the MLI, which contains a further-reaching “principle purpose test”, the Anti-Abuse Decree was partially repealed in 2017 and transformed into an ordinance.

1.5 Are treaties overridden by any rules of domestic law (whether existing when the treaty takes effect or introduced subsequently)?

In the hierarchy of legal norms, international law principally overrides domestic law in case of a conflict. However, the Swiss Federal Supreme Court has established a rare exception whereby a federal act may take precedence over international law if the Swiss parliament has deliberately legislated in breach of a treaty (so-called “Schubert practice”).

1.6 What is the test in domestic law for determining the residence of a company?

Companies are considered to be Swiss tax resident and thus subject to unlimited taxation on their worldwide income in Switzerland if: (i) their statutory seat, and/or (ii) their place of effective management is/are situated in Switzerland.

2 Transaction Taxes

2.1 Are there any documentary taxes in your jurisdiction?

Switzerland levies the following documentary taxes:

One-time capital duty

The issuance of new shares by, and capital contributions to, a Swiss resident company are subject to one-time capital duty at a rate of 1% (issuances up to CHF 1 million are exempt therefrom). However, restructuring and migration as well as recapitalisation relief is available.

Securities transfer tax

The transfer of taxable securities is subject to securities transfer tax at a rate of 0.15% for Swiss securities and 0.3% for foreign securities, respectively, if taxable securities are transferred against consideration and at least one of the parties or intermediaries involved qualifies as a Swiss securities dealer and none of the exemptions applies. Swiss securities dealers include banks and bank-like financial institutions as defined by Swiss banking law as well as Swiss investment fund managers. It also includes individuals, companies, partnerships and branches of foreign companies whose essential activities consist in trading or acting as intermediaries in transactions involving taxable securities. Further, Swiss companies that do not engage in the securities trading business and Swiss pension funds qualify as securities dealers if they hold taxable securities with a book value exceeding CHF 10 million.

Insurance premium tax

Certain insurance premiums are subject to an insurance premium tax at a rate of 5% (standard rate) or 2.5% (in case of life insurance premiums).

Real estate transfer tax

Real estate transfer taxes may be triggered upon the sale of real estate property situated in Switzerland or a real estate company.

2.2 Do you have Value Added Tax (or a similar tax)? If so, at what rate or rates?

In Switzerland, Value-Added Tax (“VAT”) is levied at a standard rate of 7.7%. A reduced rate of 2.5% applies to some goods such as medicine, newspapers, books and food. Further, accommodation services (hotels) are taxed at a special rate of 3.7%.

2.3 Is VAT (or any similar tax) charged on all transactions or are there any relevant exclusions?

Taxable transactions subject to VAT include: (i) the supply of goods or services for consideration within the Swiss territory, (ii) the purchase of services from abroad (reverse charge), and (iii) the importation of goods (import VAT).

Certain supplies, in particular financial services, insurance and real estate transactions as well as healthcare, education, culture, sport, social care, gambling and lotteries are exempt from VAT without credit. In such cases, the taxable persons are not entitled to deduct the input tax charged on costs. In addition, certain supplies are classified as tax-exempt with credit or zero-rated, typically in relation to the exportation of goods from Switzerland. These transactions allow the recovery or deduction of input tax.

2.4 Is it always fully recoverable by all businesses? If not, what are the relevant restrictions?

Businesses registered for VAT may recover or deduct the VAT paid on costs (“input tax”) provided that such costs are attributable to taxable supplies, including zero-rated supplies. Input tax related to supplies of goods or services that are exempt from VAT without

credit is not recoverable or deductible unless an option to tax is available and exercised. If a taxable business makes both taxable supplies and exempt supplies without credit for input tax, it may only recover or deduct input tax on non-attributable costs according to its deduction *pro rata*.

Furthermore, input tax may not be recovered on costs that are not used for the business acting as such (e.g. private use).

2.5 Does your jurisdiction permit VAT grouping and, if so, is it “establishment only” VAT grouping, such as that applied by Sweden in the *Skandia* case?

In Switzerland, it is possible to form a VAT group that qualifies as a single taxable person for VAT purposes. In accordance with the ECJ case “*Skandia*”, VAT grouping is limited to entities located in Switzerland and may include Swiss permanent establishments of foreign companies. In this context, the supply of services by the foreign head office to its Swiss permanent establishment (whether or not it is part of a Swiss VAT group) is regarded as a supply for VAT purposes between two separate taxpayers that may attract VAT in Switzerland (reverse charge).

2.6 Are there any other transaction taxes payable by companies?

Apart from VAT, companies are liable for real estate transfer tax and securities transfer tax (see question 2.1).

2.7 Are there any other indirect taxes of which we should be aware?

In Switzerland there are indirect taxes on mineral oil, alcohol and tobacco, the emissions of carbon dioxide, heavy traffic, radio and television broadcasting.

3 Cross-border Payments

3.1 Is any withholding tax imposed on dividends paid by a locally resident company to a non-resident?

Effective and constructive dividend distributions (including the distribution of liquidation proceeds and stock dividends) made by a Swiss resident company to its shareholders are subject to Swiss withholding tax at a rate of 35%. The Swiss company is required to withhold the payable withholding tax from the dividend and transfer the latter to the SFTA. Distributions based on a capital reduction and/or reserves paid out of capital contributions are not subject to Swiss withholding tax.

Swiss withholding tax is refundable or creditable in full to a Swiss tax resident corporate and individual shareholder as well as to a non-Swiss tax resident corporate or individual shareholder who holds the shares through a Swiss branch office if such a recipient is the beneficial owner of the distribution received and the income is recognised in the income statement or reported in the income tax return of the recipient, as the case may be.

Shareholders who are not resident in Switzerland for tax purposes (and who are not conducting a trade or business through a Swiss branch office) may be entitled to a full or partial refund of Swiss withholding tax if the country in which such a recipient resides for tax purposes has concluded a DTT with Switzerland and further conditions of such a DTT are met. Under certain circumstances, a full refund is also conceivable under the AEOI.

If the conditions set out by the applicable DTT are met, the recipient of the dividends may request a refund of the Swiss withholding tax by the end of the calendar year for up to three years after the end of the calendar year in which the dividends were due.

Relief at source is available (instead of paying the relevant tax and subsequently claiming a refund thereof) under certain circumstances, provided that an application for the notification procedure has been filed with and granted by the SFTA prior to any distributions. The permit granted for the respective relief at source is valid for three years and can be renewed thereafter.

It should be noted that DTT relief is conditional upon strict substance requirements such as local office space, employees and business activities. In addition, the foreign entity must be properly capitalised in line with the Swiss thin capitalisation rules (see question 3.4).

3.2 Would there be any withholding tax on royalties paid by a local company to a non-resident?

Royalty payments made by Swiss residents are not subject to Swiss withholding tax unless excessive royalty payments are made to related parties (i.e. if the arm's length principle is not adhered to). Such excessive royalty payments would be re-qualified into constructive dividend distributions subject to 35% Swiss withholding tax.

3.3 Would there be any withholding tax on interest paid by a local company to a non-resident?

Under Swiss domestic tax law, withholding tax is only levied on interest from: (i) Swiss bonds, or (ii) customer deposits held with Swiss banks. Under the current law, a Swiss fixed term instrument will be characterised as a "bond" if it cannot be excluded pursuant to its terms that it is held at any time by more than 10 creditors that are not banks. Swiss withholding tax is also triggered if a Swiss borrower has more than 20 lenders that are not banks under any type of fixed term debt instruments in the aggregate. Any Swiss withholding tax on such interest may be reduced under an applicable DTT.

By contrast, individual loans, including intercompany loans, are not subject to Swiss withholding tax. However, intercompany loans or the intercompany funding of a Swiss company, respectively, must be compliant with: (i) the safe harbour interest rates published annually by the SFTA (alternatively, evidence must be provided that the interest rate is at arm's length); and (ii) the Swiss thin capitalisation rules (see question 3.4 and 3.5). If not, the interest payment is (in full or in part) re-characterised as a constructive dividend distribution with the corresponding Swiss withholding tax consequences. Under this scenario, the treaty rate for dividend payments would be applicable.

Further, a specific withholding tax may be levied on interest payments if a loan is secured by a mortgage on real estate located in Switzerland. Whereas the tax rate is 3% on the federal level, it differs from canton to canton on the cantonal level. This source tax may be refunded (in full or in part) under a DTT.

3.4 Would relief for interest so paid be restricted by reference to "thin capitalisation" rules?

The tax practice regarding thin capitalisation is laid down in a circular letter no. 6 issued by the SFTA on 6 June 1997, which places a limit on the maximum amount of debt granted by related parties on which deductible interest payments are available. According to the circular letter, each asset category of the borrowing Swiss company must be financed by a certain equity portion, i.e. the maximum underlying debt for each asset category is determined by a safe harbour debt-to-equity ratio (see question 3.5). To the extent that related-party debt (including related-party guaranteed third-party debt) exceeds the maximum permissible debt as determined based on these rules, the company is deemed to be thinly capitalised for tax purposes.

As a consequence, excess related-party debt, if any, will be: (i) considered as hidden equity for capital tax purposes, (ii) interest payments made on such related party debt are not tax deductible, and (iii) would be re-qualified into constructive dividend distributions with the respective Swiss withholding tax consequences.

3.5 If so, is there a "safe harbour" by reference to which tax relief is assured?

According to the circular letter no. 6 issued by the SFTA on 6 June 1997, the maximum underlying debt for each asset category is determined by a safe harbour debt-to-equity ratio as shown in the table below. The calculation is based on the fair market values of the underlying assets.

Cash and cash equivalents	100%
Accounts receivable	85%
Other receivables	85%
Inventories	85%
Other current assets	85%
Domestic and foreign bonds in CHF	90%
Foreign bonds in foreign currency	80%
Listed domestic and foreign shares	60%
Non-listed domestic and foreign shares	50%
Participations	70%
Loan receivables	85%
Property/equipment	50%
Factory premises/plants	70%
Home property, construction land	70%
Other real estate	80%
Cost of constitution, increase of capital and organisation	0%
Goodwill	70%

As an exception thereto, a safe harbour debt-to-equity ratio of 6:1 applies to finance companies. In addition, a Swiss company which does not observe the safe harbour rules may always prove that a higher debt is still at arm's length.

3.6 Would any such rules extend to debt advanced by a third party but guaranteed by a parent company?

The Swiss thin capitalisation rules extend to third-party debt guaranteed by a related party.

3.7 Are there any other restrictions on tax relief for interest payments by a local company to a non-resident, for example pursuant to BEPS Action 4?

Interest payments on related-party debt must be both in compliance with the thin capitalisation rules and the safe harbour interest rates published annually by the SFTA (alternatively, evidence must be provided that the interest rate is at arm's length).

Further, Switzerland takes the view that the existing thin capitalisation rules are sufficient to prevent unreasonable interest deductions and, thus, has not introduced further measures in connection with Action 4 of the BEPS project. As far as the authors can tell, there is no intention on the part of the Swiss legislator to change the current rules and implement new ones.

3.8 Is there any withholding tax on property rental payments made to non-residents?

No Swiss withholding tax is levied on property rental payments. However, if the payment is: (i) made to a related party, and (ii) not at arm's length, such excessive payments would be re-qualified into constructive dividend distributions subject to 35% Swiss withholding tax.

3.9 Does your jurisdiction have transfer pricing rules?

Switzerland does not have any statutory transfer pricing rules. However, as a general rule, intercompany charges must be at arm's length. The tax authorities accept the transfer pricing methods described by the OECD guidelines.

Further, special guidelines apply concerning the minimum and maximum interest on loans granted to or from shareholders or related parties. With regard to the arm's length character of the interest rate, the SFTA annually publishes safe harbour interest rates in its circular letters.

4 Tax on Business Operations: General

4.1 What is the headline rate of tax on corporate profits?

Corporate income tax is levied on the federal, cantonal and municipal level. The effective corporate income tax rates vary from canton to canton respectively from municipality to municipality and range between 12% and 24% (ordinarily taxed companies).

In the course of the implementation of the Corporate Tax Reform ("STAF") as of 1 January 2020, the existing tax privileges (such as finance branches, mixed, domiciliary, principal and holding company regimes) will be abolished and replaced by other OECD compliant measures (e.g. IP box, R&D super deduction and notional interest deduction), leading to a reduced corporate income tax liability. Furthermore, most cantons reduced their corporate income tax rates.

4.2 Is the tax base accounting profit subject to adjustments, or something else?

As a general rule, the statutory financial statements form the basis for the determination of the taxable income of a Swiss company. However, this tax base is subject to certain adjustments according to Swiss tax law (e.g. in case of constructive dividend distributions).

4.3 If the tax base is accounting profit subject to adjustments, what are the main adjustments?

The main adjustments relate to expenditures which are not commercially justified and, hence, non-deductible for tax purposes (in particular, expenses *vis-à-vis* related parties that are not at arm's length).

4.4 Are there any tax grouping rules? Do these allow for relief in your jurisdiction for losses of overseas subsidiaries?

In Switzerland, each company is considered as a separate taxpayer for corporate income tax purposes. Accordingly, no income tax grouping or loss consolidation is available in Switzerland (i.e. no group taxation).

For VAT purposes, on the other hand, legal entities, partnerships and individuals who have their domicile or seat in Switzerland as well as Swiss branches of foreign entities may form a group. In this case, transactions within the VAT group are not subject to Swiss VAT as the group members are registered as a single taxable entity.

4.5 Do tax losses survive a change of ownership?

Tax losses may be carried forward and offset against any taxable income generated in the next seven years and do not forfeit as a consequence of a change of ownership.

Furthermore, tax losses may be transferred to another Swiss resident company or branch in the course of a tax-neutral restructuring (e.g. merger, spin-off, transfer of a business operation) if such a transfer is not considered as abusive.

4.6 Is tax imposed at a different rate upon distributed, as opposed to retained, profits?

Corporate income taxes are levied at ordinary rates on the taxable profit of the taxpayer regardless of whether the profit is distributed or retained. However, it should be noted that in most cantons ordinary dividend distributions reduce the relevant capital tax base. Furthermore, such profit distributions are subject to Swiss withholding tax which may be fully or partly refundable (see question 3.1).

4.7 Are companies subject to any significant taxes not covered elsewhere in this chapter – e.g. tax on the occupation of property?

Companies are subject to an annual capital tax on the cantonal and municipal level. The tax is calculated based on the net equity (nominal share capital, capital contribution reserves, reserves and retained earnings) plus any embedded equity and/or any other taxed embedded reserves to the extent that the aggregate taxable capital is allocable to Switzerland. The applicable tax rates vary from about 0.001% to 0.53%. In some cantons, the corporate income tax is creditable to the annual capital tax.

Certain cantons/municipalities levy an annual property tax on the taxable value of the property situated in that specific canton/municipality without taking into account any related debts or mortgages. The property is taxed at its location, irrespective of where the owner is resident.

5 Capital Gains

5.1 Is there a special set of rules for taxing capital gains and losses?

Capital gains derived from the sale of movable assets are generally subject to corporate income tax on the federal, cantonal and municipal level and capital losses are tax-deductible. The participation exemption applies to capital gains derived from a disposal of a qualifying participation of at least 10% provided that the minimum holding period of one year is met and leads to a virtual tax exemption of such qualifying capital gains (see question 5.2). However, recaptured depreciations (difference between acquisition costs and book value) on such qualifying participations are subject to ordinary taxation. Tax losses may be carried forward for the next seven years (see question 4.5).

With regard to immovable assets, there are two different systems of taxing capital gains derived from the disposal of real estate properties by companies or the transfer of an interest in a real estate company in Switzerland on the cantonal/municipal level. On the one hand, there is the monistic system where corporate income tax is levied only on recaptured depreciations and the appreciation of value above acquisition costs is subject to real estate capital gains tax. On the other hand, there is the dualistic system where the recaptured depreciation deductions as well as the appreciation of value above acquisition costs are exclusively subject to ordinary corporate income tax. On the federal level, ordinary taxation applies with regard to such immovable assets.

5.2 Is there a participation exemption for capital gains?

A participation exemption is available which applies to capital gains (difference between the sales price and the acquisition costs) derived from a disposal of a qualifying participation (at least 10%) provided that the minimum holding period of one year is met.

The corporate income tax liability will be reduced by the ratio between the net participation income (taking into account administrative and financing costs) and the aggregate taxable income. In the event of losses or tax loss carryforwards, the qualifying participation income will be offset against these tax losses, wiping out the ensuing tax benefit.

5.3 Is there any special relief for reinvestment?

According to the Swiss restructuring rules as outlined in circular letter no. 5 issued by the SFTA on 1 June 2004, mergers, spin-offs, conversions and transfers of assets may be executed tax-neutrally, i.e. hidden reserves on such assets can be rolled over, provided that (i) the tax liability remains in Switzerland, and (ii) the assets and liabilities will be transferred at book value and the further requirements (e.g. business operation, operating fixed asset, qualifying participation), if any, are met.

Moreover, the taxation of a capital gain derived from the disposal of fixed assets (including real estate) or participations could, under certain circumstances, be deferred if such assets are replaced by other assets that are required for the business operations in Switzerland.

5.4 Does your jurisdiction impose withholding tax on the proceeds of selling a direct or indirect interest in local assets/shares?

No Swiss withholding tax in Switzerland is levied on the direct or indirect sale of local assets/shares in Switzerland.

6 Local Branch or Subsidiary?

6.1 What taxes (e.g. capital duty) would be imposed upon the formation of a subsidiary?

The issuance of new shares by and capital contributions to a Swiss resident company are subject to one-time capital duty at a rate of 1% (issuances up to CHF 1 million are exempt therefrom). However, restructuring and migration as well as recapitalisation relief is available.

One-time capital duty is not triggered in the event of an allocation of capital to a Swiss branch.

6.2 Is there a difference between the taxation of a local subsidiary and a local branch of a non-resident company (for example, a branch profits tax)?

In general, a Swiss branch of a foreign head office is subject to the same corporate income and capital tax as a Swiss company. In the case of Swiss companies, the corporate income tax is levied on the worldwide income with the exception of income attributable to foreign permanent establishments or immovable property. By contrast, a Swiss permanent establishment of a non-Swiss head office is taxed in Switzerland on the profit and equity allocated to such a Swiss branch. The allocation is usually based on separate financial statements, as if the branch office were a corporate entity separate from its head office.

Further, any dividend or liquidation dividend in excess of the nominal share capital plus capital contribution reserves made by a Swiss company is subject to Swiss withholding tax at a rate of 35%, which may be partly or fully refundable. By contrast, the remittance of funds from a Swiss branch to its head office is possible without triggering Swiss withholding tax.

While one-time capital duty is levied on the incorporation of a Swiss company, if the founders' contribution exceeds CHF 1 million, the one-time capital duty will not fall due in the event of a Swiss branch as such a branch does not constitute a legal entity that could issue ownership rights.

The transfer of taxable securities is subject to securities transfer tax if taxable securities are transferred against consideration and at least one of the parties or intermediaries involved qualifies as a Swiss securities dealer and no exemption applies. Swiss companies that do not engage in the securities trading business qualify as securities dealers if they hold taxable securities with a book value exceeding CHF 10 million. Branches, on the other hand, do not qualify as securities dealers merely on account of holding of taxable securities.

6.3 How would the taxable profits of a local branch be determined in its jurisdiction?

Swiss tax law regulates the profit allocation between head office and branch only in a very rudimentary way. In case of a Swiss branch of a foreign legal entity, a fiction of full independence is generally assumed and the taxable profit is typically determined based on separate branch accounts (direct method).

6.4 Would a branch benefit from double tax relief in its jurisdiction?

A Swiss branch is not entitled to benefit from DTTs entered into by Switzerland. However, the Swiss branch could claim the DTT benefits arising from the DTTs between the source state and the state in which the head office is located to the extent the relevant income is allocated to such a Swiss branch.

6.5 Would any withholding tax or other similar tax be imposed as the result of a remittance of profits by the branch?

The repatriation of profits by the Swiss branch to its head office is not subject to any withholding or other taxes in Switzerland.

7 Overseas Profits

7.1 Does your jurisdiction tax profits earned in overseas branches?

Income attributable to foreign enterprises, permanent establishments or real estate located abroad is exempt from taxation in Switzerland.

7.2 Is tax imposed on the receipt of dividends by a local company from a non-resident company?

In general, dividends received constitute taxable income. However, the participation exemption applies if the participation represents more than 10% of the nominal share capital or reserves of the distributing company or it has a fair market value of at least CHF 1 million (see question 5.2).

7.3 Does your jurisdiction have "controlled foreign company" rules and, if so, when do these apply?

Switzerland does not have any controlled foreign company rules.

8 Taxation of Commercial Real Estate

8.1 Are non-residents taxed on the disposal of commercial real estate in your jurisdiction?

Any capital gains derived from the disposal of real estate properties situated in Switzerland by (Swiss or foreign) companies are either subject to corporate income tax or a combination of corporate income tax and real estate capital gains tax. The same basically holds true for the sale of a real estate company, whereby most cantonal tax laws require that a majority stake in a real estate company is sold. A real estate company is defined as a company whose main actual purpose is to hold property and which is mainly engaged in purchasing, selling and leasing of property.

Furthermore, many (but not all) cantons levy a real estate transfer tax (ranging between 1% and 3%) on the transfer of real estate. The real estate transfer tax is generally computed based on the sales price.

8.2 Does your jurisdiction impose tax on the transfer of an indirect interest in commercial real estate in your jurisdiction?

In certain cantons, the indirect transfer of residential or commercial real estate by way of a sale of a majority stake (in certain cantons already a minority stake) of a real estate company triggers real estate transfer tax and real estate capital gains tax (see question 8.1).

8.3 Does your jurisdiction have a special tax regime for Real Estate Investment Trusts (REITs) or their equivalent?

Switzerland does not have a special tax regime for REITs.

Special rules apply to funds with direct ownership of real estate. As a general rule, funds are treated as transparent for Swiss tax purposes. This means that the income and capital is directly attributed to the investors. Funds with direct ownership of real estate are, however, treated as non-transparent (i.e. the fund is considered as the taxpayer) and taxed on any income at reduced rates. Given that funds with direct ownership of real estate are already taxed, there is basically no taxation on the level of the investor. For this reason, no withholding tax is charged on the distribution or accrual of income from direct property holdings by the fund.

9 Anti-avoidance and Compliance

9.1 Does your jurisdiction have a general anti-avoidance or anti-abuse rule?

Switzerland lacks a general statutory anti-avoidance rule in its domestic tax law. As a consequence, the Swiss Federal Supreme Court has stepped in and developed an anti-abuse doctrine, applicable to all types of Swiss taxes, to counteract abusive tax planning. According to this judicially developed anti-abuse doctrine, tax authorities have the right to tax the taxpayer's legal structure based on its economic substance, provided that such a structure has an unusual and inappropriate character, can only be explained by tax reasons and will lead to significant tax savings if recognised by the tax authority.

9.2 Is there a requirement to make special disclosure of avoidance schemes?

No special disclosure is required under Swiss law. However, if a legal arrangement is considered as being abusive by the competent Swiss tax authority, it is disregarded from a tax point of view and taxed in accordance with its economic substance (see question 9.1).

9.3 Does your jurisdiction have rules which target not only taxpayers engaging in tax avoidance but also anyone who promotes, enables or facilitates the tax avoidance?

In the event of tax avoidance, affairs are arranged with a view to taking advantage of weaknesses or ambiguities in a tax system, which is not a punishable offence under Swiss law. If such a structure is considered improper or abusive, it will be disregarded and taxed in accordance with its economic substance (see questions 9.1 and 9.2). Thus, tax avoidance cannot be equated with tax evasion or fraud, which is a punishable offence under Swiss law as it involves the use of illegitimate means. Only to the extent that such a tax offence occurs, other persons who instigate, assist or participate in the tax evasion or fraud may also be targeted and punished.

9.4 Does your jurisdiction encourage “co-operative compliance” and, if so, does this provide procedural benefits only or result in a reduction of tax?

Whilst there are no statutory rules for “co-operative compliance”, it is common practice in Switzerland to discuss planned structures and transactions with the tax authorities in advance and to obtain legal certainty on the tax consequences by seeking the tax authorities' written approval prior to entering into any transactions (so-called “tax ruling”).

An advance tax ruling is binding upon the tax authorities based on the principle of dealing in good faith and deploys effects in subsequent tax assessment procedures. However, it does not provide procedural benefits or a reduction of tax for which there is no legal basis.

10 BEPS and Tax Competition

10.1 Has your jurisdiction introduced any legislation in response to the OECD's project targeting BEPS?

Switzerland has adopted the global minimum standard included in Action 13 of the OECD base erosion and profit shifting (“BEPS”) project for the automatic exchange of country-by-country reports. The relevant legal framework entered into force on 1 December 2017 and includes the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (“CbC-MCAA”), the associated Swiss Federal Act on the International Automatic Exchange of Country-by-Country Reports of Multinationals (“CbC Act”) and the Ordinance on International Automatic Exchange of Country-by-Country Reports (“CbC-Ordinance”).

Further, as part of Action 5 of the BEPS project, the spontaneous exchange of information on certain categories of tax rulings was introduced as a minimum standard and the respective legal framework to implement this standard became effective in Switzerland on 1 January 2017. Switzerland has exchanged information on certain categories of tax rulings since 2018.

In addition, the MLI will enter into force for Switzerland on 1 December 2019. The MLI was developed as a measure pertaining to Action 15 of the BEPS project addressing how other BEPS measures can be efficiently implemented into the existing networks of bilateral DTTs.

Furthermore, the Swiss population approved the new corporate tax reform on 19 May 2019 that will enter into force on 1 January 2020. This reform implements, *inter alia*, measures in response to the results of the BEPS project.

10.2 Has your jurisdiction signed the tax treaty MLI and deposited its instrument of ratification with the OECD?

Switzerland signed the MLI on 7 June 2017 and deposited its instrument of ratification on 29 August 2019. In Switzerland, the MLI will enter into force on 1 December 2019.

10.3 Does your jurisdiction intend to adopt any legislation to tackle BEPS which goes beyond the OECD's recommendations?

Currently, Switzerland does not intend to adopt any BEPS measures that go beyond the OECD's recommendations.

10.4 Does your jurisdiction support information obtained under Country-by-Country Reporting (CBCR) being made available to the public?

Information obtained under the Automatic Exchange of Country-by-Country Reports is directed exclusively at the relevant tax authorities and will not be made available to the public.

Multinational companies in Switzerland had to produce a report for the first time for the fiscal year 2018 and the reports will be first exchanged in the year 2020.

10.5 Does your jurisdiction maintain any preferential tax regimes such as a patent box?

In the course of the implementation of the STAF as of 1 January 2020, existing tax privileges (such as finance branches, mixed, domiciliary, principal and holding company regimes) will be abolished and replaced by other OECD compliant measures (e.g. IP box, R&D super deduction notional interest deduction). Furthermore, most cantons will reduce their corporate income tax rates.

11 Taxing the Digital Economy

11.1 Has your jurisdiction taken any unilateral action to tax digital activities or to expand the tax base to capture digital presence?

Up until now, Switzerland has not taken any unilateral action in connection with the taxation of the digitalised economy. Neither does it plan to introduce any interim measures such as a digital tax implemented by certain EU countries.

On 31 May 2019, the OECD published a work plan on the tax challenges arising from the digitalisation of the economy and Switzerland actively participates in this process of developing consensus-based international tax rules that adapt to the changing business models in a digitalised economy.

11.2 Does your jurisdiction favour any of the G20/OECD's "Pillar One" options (user participation, marketing intangibles or significant economic presence)?

Up until now, the Swiss State Secretariat for International Finance ("SIF") has only taken a general stance on the taxation of the digitalised economy public without making a statement about a favoured option. Overall, the SIF supports a multilateral approach under which profits should be allocated and taxed where added value is created and which do not cause double or over-taxation.



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Fabienne Limacher's professional languages are German and English. She also speaks French. She is registered with the Zurich Bar Registry and admitted to practice in all Switzerland.

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