

Newsletter No.

179

Swiss reject tax reform aiming at strengthening domestic debt capital markets

On 25 September 2022, the people of Switzerland rejected the governmentally and Parliament-backed changes to the national withholding tax and stamp duty regime that, among others, would have led to an abolition of withholding tax on bond yields and on interest income of Swiss funds. The margins of the vote's rejection were close, with 52 percent of voters against and 48 percent of voters in favour of the proposal.

walderwyss attorneys at law



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

Proposed changes

The reform proposed by the Federal Council on 14 April 2021 was primarily aimed at facilitating the withholding tax-free issuance of new domestic bonds and, therefore, at strengthening the Swiss capital market. Secondly, income from bonds from domestic funds reported separately should have been exempt from withholding tax. Thirdly, securities transfer stamp tax on domestic bonds would have been abolished with a view to enhancing trades in domestic bonds in the secondary market. Primary market transactions involving domestic bonds, as well as the return of securities for redemption, are already exempt from securities transfer stamp tax. Last, but not least, a further amendment would have foreseen the exemption of brokerage or purchase and sale of domestic or foreign participations of at least 10% of the share capital or nominal capital of other companies by a securities dealer within the meaning of the Federal Stamp Tax Act from securities transfer stamp tax.

Withholding tax on Swiss bonds and thus Swiss Non-Bank Rules to stay

Unlike many countries, Switzerland does not charge withholding tax on interest paid on private and commercial loans (including on arm's length inter-company loans). However, 35% withholding tax is levied both on interest paid to Swiss or foreign lenders on bonds and similar collective debt instruments issued by or on behalf of Swiss resident issuers and on interest paid by Swiss banks.

Since capital markets tend to stay away from bonds subject to withholding tax, Swiss multinational groups frequently resort to issuing bonds through a foreign subsidiary. However, the Swiss Federal Tax Administration (SFTA) will reclassify such foreign bonds into domestic bonds if the resulting proceeds used in Switzerland exceed certain thresholds (i.e. the

combined accounting equity of all non-Swiss subsidiaries of the Swiss parent company and the aggregate amount of loans granted by the Swiss parent and its Swiss subsidiaries to non-Swiss affiliates). In order to avoid withholding tax on regular loans (as distinct from bonds, which are subject to said tax anyway), credit facility agreements entered into by a Swiss borrower or a non-Swiss borrower under a guarantee from a Swiss parent company must contractually restrict free transferability and syndication by invoking the so-called "**Swiss Non-Bank Rules**" and stating that the lenders must, for the entire duration of the loan, prohibit assignments, transfers or significant sub-participations of loan tranches that would result in the involvement of more than 10 non-bank lenders and the borrower must always ensure that the number of non-bank lenders will not exceed 20 in respect of all its borrowings (affiliated lenders do not fall under the provisions in either case).

Comment

The abolition of withholding tax on bonds and the remaining proposed changes to the local withholding tax and securities transfer stamp tax regime would have certainly facilitated and simplified all sorts of financing and refinancing activities in Switzerland (e.g. raising capital via bond issuances, crowdfunding platforms, asset-backed security structures and other capital market transactions).

However, in practice, at least the credit financing markets in all shades and forms have come to terms with the Swiss peculiarities and restrictions imposed on the syndication to non-bank lenders under the Swiss Non-Bank Rules, which now remain in place and must be complied with. Swiss multinational groups will continue to issue financing bonds either through their foreign subsidiaries or, alternatively, via multi-seller conduits or securitisation platforms. Acquisition bonds issued for

Swiss acquisitions will have to be issued abroad on a higher-tier level and on-lent through the acquisition structure down to the Swiss buying entities.

For further information on this topic and structuring alternatives to avoid Swiss withholding taxes, please contact Maurus Winzap or Fabienne Limacher at Walder Wyss by telephone (+41 58 658 58 58) or email maurus.winzap@walderwyss.com or fabienne.limacher@walderwyss.com). The Walder Wyss website can be accessed at www.walderwyss.com.

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.

© Walder Wyss Ltd., Zurich, 2022