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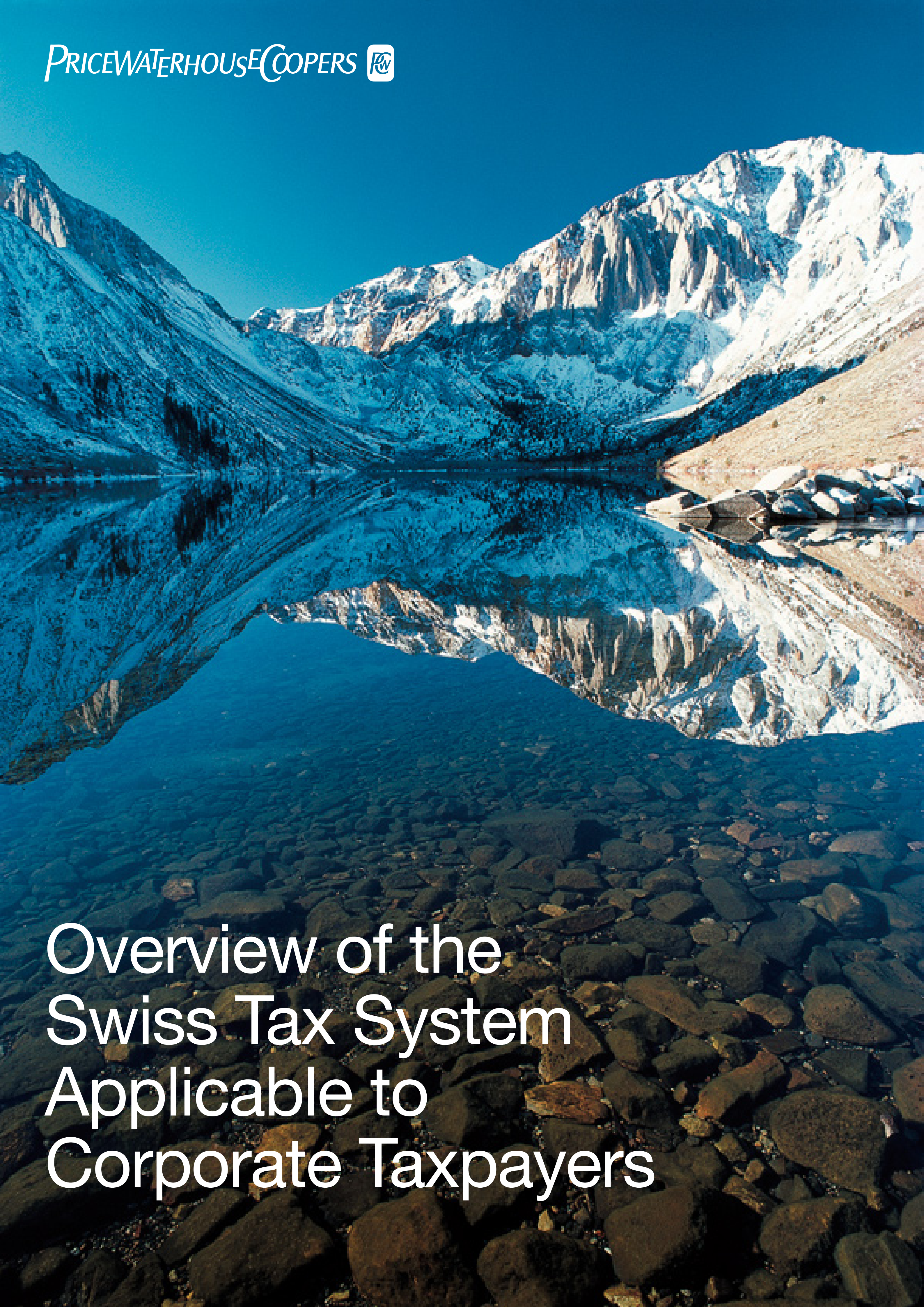

Overview of the Swiss Tax System Applicable to Corporate Taxpayers

Foreword

This Overview has been prepared for the assistance of those interested in the Swiss Tax System Applicable to Corporate Taxpayers. It has been carefully compiled, but no representation is made or warranty given as to the completeness or accuracy of the information it contains. The information contained in this publication is not intended to be considered advice on any particular matter. No subscriber or other reader should act on the basis of any information contained in this Overview without considering appropriate professional advice.

The material contained in this Overview was assembled in January 2005 and, unless otherwise indicated, is based on information available at that time.

A. Overview

The Swiss Federation consists of 26 sovereign cantons and approximately 3000 independent municipalities. According to the Swiss constitution, the cantons have fiscal sovereignty and the full right of taxation, to the extent the right to tax a particular source is not exclusively allocated to the Federation in the Federal Constitution. As a consequence Switzerland has two levels of taxation – the federal and the cantonal / communal levels.

In recent years the cantons were required to harmonize the formal aspects of their tax laws (such as the determination of taxable income, deductions, tax periods, assessment procedures etc.) based on a Federal Tax Harmonization Act. The cantons however still remain free to set the tax rates. Therefore, the tax burden of a company may very considerably depending on its canton and municipality of residence.

Main corporate taxes levied at federal level:

- Corporate Income Tax
- Value Added Tax
- Withholding Tax
- Stamp Taxes:
  – Issuance Stamp Tax
  – Securities Turnover Tax

Main corporate taxes levied at cantonal/communal level:

- Corporate Income Tax
- Corporate Capital Tax

B. Understanding the Swiss Tax Authorities and their Tax Ruling Practice

Unlike in many jurisdictions, the relationship between the tax authorities, taxpayer and their advisors is built on mutual respect and trust. As long as a company and its advisors are truthful with the tax authorities and make the appropriate level of disclosure, the relationship will generally be similar to any other friendly business relationship.

As will be mentioned at various times through out the text, it is common practice in Switzerland to enter into tax rulings with the federal and/or cantonal tax authorities to regulate a variety of taxation aspects. This could be obtaining a special tax status for income tax purposes; applying for the tax neutrality of a reorganization; regulating VAT consequences for a set of business transactions etc.

Tax rulings generally take approximately four to six weeks to obtain, which is very quick by international standards. Oftentimes this process can be expedited for urgent matters. Tax rulings are generally granted for an unlimited period of time and can be relied upon unless the tax law or practice or the Swiss company's circumstances change materially. They are furthermore not published or otherwise made known publicly.

C. Corporate Income Tax

I. Federal Level

The Swiss Federation levies income tax at a flat rate of 8.5% on profit after tax. As taxes are deductible in computing taxable income in Switzerland, the effective income tax rate on profit before tax is 7.83%.

1. Determining Taxable Income

Resident companies are subject to federal corporate income tax on their worldwide income. Income attributable to permanent establishments or immovable property located abroad is however excluded from the Swiss tax base and only taken into account for rate progression purposes in the cantons that still apply progressive tax rates.

Branches of non-resident companies are subject to tax on income attributable to the branch.

The statutory accounts of a Swiss company or, in the case of a foreign company, the branch accounts serve as the basis for determining taxable income. There are generally very few differences between statutory profit and taxable profit apart from the participation exemption for dividends and capital gains income (described immediately below), some adjustments required by tax law as well as the usage of existing tax loss carry forwards.

2. Participation Exemption

The participation exemption is the name generally attributed to the tax relief received for qualifying dividends and capital gains income of a company. The participation exemption is not an outright tax exemption, but rather a tax abatement mechanism. It is therefore also commonly referred to as "participation deduction" or "participation relief".

The participation exemption is computed as follows:

$$\frac{\text{net participation income}}{\text{taxable income}} = \text{\%-age relief as a deduction from a company's income taxes}$$

Net participation income consists of the gross participation income from qualifying dividends and qualifying capital gains income less related administration and financing costs and any depreciation of the participation that is linked to the dividend distribution. In most cases, the participation exemption results in a full exemption of participation income from federal income tax, or one close thereto.

2.1 Dividend Income

Dividends qualifying for the participation exemption are those from participations representing at least 20% of the share capital of another company or those having a market value of at least CHF 2 million. There is neither a minimum holding period nor a requirement that the dividend paying subsidiary is liable to income tax in its jurisdiction of residence.

2.2 Capital Gains Income

Capital gains derived from the disposal of a qualifying participation are entitled to participation relief, if the following conditions are cumulatively met:

- the participation sold was owned by the company for a period of at least one year and the amount sold constitutes at least 20% of the share capital of the underlying subsidiary
- the participation sold was acquired on or after January 1, 1997 (or if this condition is not met, the sale of the so-called "Old Participation" takes place after December 31, 2006)

For "Old Participations" intra-group transactions are generally still possible in a tax neutral manner so long as the shares remain within the group until the transitional period expires (i.e., December 31, 2006).

It is noteworthy that capital gains are only entitled to participation relief to the extent the sales price exceeds the investment costs (so-called "tax value) of the participation.

3. Deductions

As already stated, the statutory accounts of the Swiss company are the basis for determining taxable income. To be tax deductible, an expense has to be booked in the statutory accounts accordingly.

In principle, it can be said that all business expenses that are booked in the statutory accounts are tax deductible assuming they are economically justified. If an expense is not a justifiable business expense in the sense of the tax law, it will be added back to taxable income. Examples typically include excessive depreciation, non- justified payments to related parties (e.g., hidden profit distributions) etc.

Guidelines for the most common deductions are set forth in the next pages.

3.1 Interest Expense

Interest paid by a corporation is a deductible business expense. Interest paid to related parties (affiliates or shareholders) has to reflect the fair market rate and is subject to limitations. (See in particular section C.I.5 concerning thin capitalization.)

The Federal Tax Administration issues safe harbor interest rates to be used on loans in Swiss Francs on an annual basis. For loans in currencies other than Swiss Francs, safe harbor interest rates are also updated regularly. The corporation may deviate from these safe harbor rates so long as it can prove that the rates used are at arm's length and more appropriate in the present case.
The safe harbor rules for loans denominated in Swiss Francs applicable from January 1, 2005 are as follows:

	Minimum Interest Rate
For loans made to related parties (in CHF)	
Financed from equity	2 ½ %
Financed from debt	actual costs plus at least
■ on amounts up to CHF 10'000'000	½ %
■ on amounts of more than CHF 10'000'000	¼ %
but in all cases **at least**	2 ½ %

	Maximum Interest Rate	
	Home construction, agriculture	Industry and and business
Loans made from related parties (in CHF)		
Real estate loans		
■ a loan up to the amount possible for mortgage (i.e., 2/3rds of the market value of the real estate)	3%	3 ½%
■ rest whereby the following maximum interest rates for debt are applicable:	4%	4 ½%
■ land, villas, residences, vacation houses, business premises up to 70% of the market value		
■ other real estate up to 80% of market value		
Operational loans		
■ made to trading and production companies	4 ½%[1]	
■ made to holding and asset administration companies	4%[1]	

[1]) In calculating the amount of the maximum interest permissible from a tax perspective, any potentially existing hidden equity has to be considered. Reference is hereby made to Circular Nr. 6 for direct federal tax purposes of June 6, 1997 which is also applicable for withholding tax and stamp tax purposes.

3.2 Depreciation

Maximum depreciation/amortization rates allowed for tax purposes are issued by the Federal Tax Administration. Higher depreciation/amortization is allowed for tax purposes, if the taxpayer can prove that such higher depreciation/amortization is required from a statutory accounting perspective. The following summary of the rates specified by the Federal Tax Administration provides the general range of allowable depreciation:

	Depreciation rates (2005)	
	Declining balance	Straight-line
Commercial buildings:		
■ Buildings alone	4%	2%
■ Buildings and land combined	3%	1.5%
Equipment:		
■ Office furniture and equipment	25%	12.5%
■ Computer hardware and software	40%	40%
Other assets:		
■ Motor vehicles	40%	20%
■ Intangible assets	40%	20%

Some cantons (such as Zurich and Basel-City) take a more liberal approach and even permit a write-down of certain assets (including fixed assets) to 20% or nil of the purchase price in the first year, provided that such write-downs do not, in the aggregate, result in a drastic decline in taxable income or even a tax loss and are commercially justified. For this accelerated depreciation to be tax deductible, it must be booked in the statutory accounts. As the cantonal tax authorities are responsible for assessing not only cantonal / communal income taxes, but also federal income taxes, the accelerated depreciation will be accepted for federal income tax purposes as well.

3.3 Royalties

Royalty payments are generally deductible for tax purposes so long as the royalty rate is at arm's length.

3.4 Management and Service Fees

Management and services fees paid by a Swiss company to a related party are deductible so long as it can be proven that the amount paid is similar to what a third party would pay for the same services.

3.5 Bad Debt Provision

Based on a longstanding but not published practice, it is possible in Switzerland to set up an accounting provision for specific impaired debts, which will be accepted for tax purposes. Unlike most other countries, it is also possible in Switzerland to set up an additional bad debt provision of 5% on all domestic and 10% on all foreign receivables (i.e., after deduction of specific impaired debts), except for intercompany receivables and those from public institutions, enabling the taxpayer to defer the related tax liability until this provision has been released. Some cantons, such as Zurich, accept an even higher reserve (i.e., 10% on domestic and 20% on foreign receivables). This additional bad debt provision may have the character of a "hidden" (undisclosed) reserve and is possible to build because the Swiss accounting standards favor prudence over true and fair view accounting principles.

3.6 Inventory Provision

Similarly to the bad debt provision, it is also possible to build a "hidden" (undisclosed) reserve on a company's inventory. This provision, which must also be booked in the statutory accounts, will like the bad debt provision also be accepted for tax purposes. In specific, a company may build a provision for obsolete inventory as well as a hidden reserve on 33.3% of the inventory value after deduction of the obsolete inventory.

3.7 Tax Expenses

Corporate income and capital taxes paid to the Swiss Federation as well as to the cantons and the municipalities are tax deductible.

3.8 Foreign Exchange Losses

Both realized and unrealized foreign exchange losses must be recorded in the statutory accounts and are accordingly tax deductible.

In contrast, only realized foreign exchange gains are allowed to be recorded as income in the statutory accounts based on Swiss accounting standards and are therefore taxable. Thus, foreign exchange gains are only taxable after realization.

3.9 Costs of Employee Share Plans and Stock Option Plans

The cost of employee share plans and stock option plans are generally deductible, assuming the employees coming under the plan are employed by the Swiss company. The same holds true for the recharge of costs for plans covering local employees.

3.10 Goodwill

Only acquired goodwill (derivative goodwill) may be capitalized in the statutory accounts and depreciated. Depreciation is generally over five years.

4. Loss Carryforward Rules

Losses incurred in prior periods may be deducted from earnings realized in the current computation period if they have not been offset against earlier profits. The tax loss carryforward period is seven years. Losses cannot be carried back in Switzerland.

5. Thin Capitalization

Switzerland has safe harbor rules for thin capitalization purposes that apply to related party debt. In specific, a unique asset base test is used to determine whether a company is adequately financed. The thin capitalization rules require that each asset class has to be underpinned by a certain equity portion. The calculation is based on fair market values, but often the lower book values suffice to demonstrate compliance with the rules.

Allowable debt financing applicable to each asset

■ cash and like assets	100%
■ debtors for deliveries of services provided	85%
■ other debtors	85%
■ inventory	85%
■ other current assets	85%
■ domestic and foreign bonds denominated in CHF	90%
■ foreign bonds not denominated in CHF	80%
■ quoted domestic and foreign shares	60%
■ other shares	50%
■ participations (share interest of market value of CHF 2 million or 20% of a company)	70%
■ loans	85%
■ business fixtures	50%
■ factories, houses, land	70%
■ other real property	80%
■ formation, capital increase, organization costs	0%
■ other immaterial assets	70%

Related party debt exceeding the allowable debt as calculated above is reclassified as equity and added back to the taxable capital for purposes of the cantonal/communal annual capital tax.

Moreover, the allowable interest deductibility on debt can be determined by multiplying the allowable debt by the safe harbor interest rates set forth in section C.I.3.1. To the extent interest payments to related parties exceed the amount which can be paid based on the allowable debt, they are added back to taxable income. Further, such interest is considered to be a hidden dividend distribution (subject to withholding tax of 35%). The guidelines provide for certain flexibility as to the debt level and allows the blending of low interest rate with high interest rate loans.

As mentioned above, these guidelines are safe harbor rules that apply to related party debt only and do not affect third party financing (i.e., third party debt will never be qualified as hidden equity). If a company decides to deviate from these rules in regard to debt from related parties, it should be in a position to prove that the debt terms are at arm's length in order to ensure tax deductibility of interest and to avoid withholding tax consequences.

6. Permanent Establishments

Under Swiss domestic law, a permanent establishment is a fixed place of business at which an entity conducts a quantitative or quantitative part of its business activities.

Permanent establishments of Swiss companies, which are located abroad are exempt from Swiss taxes. However, in certain cantons the income is taken into account for cantonal / communal income tax rate progression purposes.

Permanent establishments of foreign companies located in Switzerland are subject to tax on their income attributable to the permanent establishment at ordinary income tax rates.

7. Replacement of Goods

The capital gain on the replacement of long-term assets (including real estate), which are necessary for business purposes, can generally be rolled over in the case of the purchase of a new object with the same or similar function. The new object must be located in Switzerland and must generally be purchased within 2 years of the sale of its predecessor.

While the text of the law limits the replacement to long-term assets, which are directly associated with operating a business, there has been significant flexibility in recent years as to what constitutes a replacement of goods (e.g., application of these rules has even been granted in cases where a company undertakes an entirely new business direction).

8. Group Consolidation

Separate entity taxation applies in Switzerland for income tax purposes. Group consolidation, while a political subject for years, is not anticipated to be introduced in the near future.

9. Group Reorganizations

On July 1, 2004 the new Swiss merger law entered into force. The new law facilitates group reorganizations and mergers from both a tax and legal perspective. On the tax side, the new law to a large extent formalized the well-developed practice of the Swiss tax authorities in this area. The merger law is, in addition, a very positive development in that it has provided clarification and/or mitigated the tax burden applicable to a variety of transactions.

Particularly interesting is the ability to transfer participations and other business assets to group companies held by a common Swiss direct or indirect parent without tax consequences. As under the old practice, group reorganisations are in principle possible on a tax neutral basis to the extent the assets remain in Switzerland and the book values of the assets and liabilities remain unchanged. Depending on the type of transaction, a restriction period may be placed on a subsequent disposal of specific assets or shares. In addition, some requirements on the nature of the transferred business or participations may apply.

10. Mergers and Acquisitions

Mergers and acquisitions are generally tax neutral for income tax purposes. A classic debt push down of acquisition debt into an acquired entity (e.g., by merger of the acquisition vehicle into the acquired entity) is for the time being not possible in Switzerland.

11. Transfer Pricing

According to Swiss tax law, transactions between group companies must be at arm’s length. Switzerland does not have separate transfer pricing legislation and does not plan to issue transfer pricing legislation in the near future. Instead the Swiss tax authorities follow the transfer pricing guidelines of the OECD to determine if a transaction between related parties is at arm’s length.

In Switzerland, no specific documentation requirements for transfer pricing purposes must be observed. A company doing business in Switzerland should however have the appropriate documentation on file verifying the arm’s length nature of transactions with related parties.

12. Business Incentives / Tax Holiday

For certain specified economically under developed areas business incentives may be granted at the federal level including most importantly a full income tax holiday for as many as ten years. As all cantons offer a wide array of tax incentives, the primary discussion on this subject is set forth under section C.II.1 below.

In addition to the requirements set forth under section C.II.1. below, to obtain a federal tax holiday, it is required that the primary activity performed by the Swiss company must include industrial activities or production related services. There is generally a broad interpretation on the part of the authorities to categorize activities as industrial or production related.

Furthermore, federal tax holidays tend generally to be granted beginning with the creation of 20 jobs upwards over a 5 year period.

13. Special Tax Rulings and Practices

At the federal level, special tax privileges do not exist per se, but all companies can take advantage of the favorable tax treatment, which is built into the federal tax law.

Special favorable tax ruling practices exist in certain business sectors (e.g., for Swiss finance branches, Swiss finance companies, principal companies), which are combinable with tax holidays and other business incentives as well as a with a special cantonal tax regime.

II. Cantonal/Communal Level

On the cantonal / communal level, tax rates range between 10.7% and 24.5% depending on the canton and municipality of residency. When combined together with the federal tax, a Swiss corporate taxpayer's maximum tax burden will range between 16% and 29%.

Given the tax harmonization on the cantonal/communal level, most tax rules are identical, or very similar, to the rules on the federal level set forth above (e.g., participation exemption, loss carryforward rules and in most cases thin capitalization rules).

If the company relocates to another canton, the company will still be in a position to use its existing loss carryforwards in the new canton of residence until their expiry.

In addition, since the cantons assess the taxpayer in Switzerland for both federal and cantonal income tax purposes, where the federal and cantonal tax rules differ (e.g., more generous cantonal depreciation rules), the taxpayer can oftentimes take advantage of the more favorable cantonal tax rules for federal income tax purposes as well.

Legislation at cantonal level provides for various exemptions from cantonal and communal taxes as is described below.

1. Business Incentives

Business incentives may be granted by a canton for locating new business activities in the canton or in a specific region in the canton. Business incentives may in particular be obtained for creating a new presence or for an expansion project, which has particular economic relevance for the canton. The new business activity must furthermore not be in direct competition with existing local businesses. Lastly and potentially most importantly, business incentives are generally granted in connection with the creation of new jobs locally. By international standards, the number of jobs, which need to be created to benefit from business incentives, are generally quite low (e.g., beginning at 10-20 jobs in most cantons).

Business incentives are obtained by negotiation with the relevant cantonal Economic Promotion Office oftentimes in conjunction with the cantonal tax authorities. The business incentive package is then subject to approval by the cantonal government, which issues a formal decree detailing the incentives offered.

Incentives may include up to a ten year tax holiday at the cantonal/communal level as well as low interest loans on new buildings, easy access to work permits etc. For certain economically under developed areas the incentives may be granted at the federal level as well. This may add up to a full income tax holiday for as many as ten years.

2. Special Tax Regimes

All cantons offer tax special tax status, which are obtained by negotiation of an appropriate tax ruling with the cantonal tax authorities. The negotiations can be concluded generally within four to six weeks.

A special tax status is granted for an unlimited period of time and can be relied upon unless the Swiss company's circumstances change materially.

2.1 Holding Company Tax Regime

The holding company tax status is available to companies, which cumulatively meet the following conditions:

- the primary purpose of the company must be to hold and manage long term equity investments in affiliated companies and this purpose must be stated in the by-laws
- the company must not be engaged in a commercial activity in Switzerland
- the company must pass an asset or income test, whereby either two thirds of the company's assets must consist of substantial shareholdings or two thirds of total income of the company must consist of participation income (dividend income or capital gains) from such shareholdings

A qualifying holding company is exempt from all cantonal / communal income tax (with the exception of income from Swiss real estate which is subject to tax after deduction of typical mortgage expenditures on such real estate).

A holding company is in principle subject to an effective tax rate of 7.83% (i.e., Federal income tax rate) prior to participation relief for qualifying dividends and capital gains. A reduced capital tax on cantonal / communal tax level applies.

A tax ruling should be obtained prior to forming the holding company from the cantonal tax authorities in the proposed canton of residence to confirm holding company status and to negotiate any fact specific issues.

2.2 Domicile Company Tax Regime

The domicile company tax status is available to companies, which carry out only administrative functions in Switzerland and no commercial activities. Outside Switzerland a company with the domiciliary tax privilege may conduct any activities whatsoever.

In so far as a company fulfils the above criteria, it may apply to the cantonal tax authorities in the proposed canton of residence for a tax ruling entitling it to the following taxation:

- a modest portion of foreign source income (i.e., from 0% - 15%) is subject to tax in accordance with the importance of the administrative function in Switzerland
- qualifying income from participations (including dividends, capital gains and re-evaluation gains) can be received tax-free
- all income from Swiss sources is taxed at ordinary rates
- expenditures, which are justified for business purposes are deductible from the income to which they have a business correlation. With regard to losses from participations, these can in particular only be deductible against taxable income from participations (i.e., such income, which is not received tax-free)
- reduced capital tax rates are applicable

The conditions to qualify as a domicile company vary from canton to canton. This is particularly the case with regard to determining the amount of income from foreign sources subject to tax in Switzerland and in the definition of exactly what type of income is considered foreign source income.

A domicile company can be expected to be subject to an effective tax rate of 7.83% - 11% on foreign source income.

2.3 Administative / Auxiliary / Mixed Company Tax Regime

This tax status, which is very similar to the domicile company tax status, has been given different names by the cantons. Internationally it is most often referred to however as the "mixed company" tax status.

In contrast to the pure domicile company status, it is permissible for a mixed company to undertake limited commercial activity in Switzerland. As a general rule, at least 80% of the income from commercial activities of a mixed company must be derived from non-Swiss sources (i.e., a maximum of 20% of income may be linked to Swiss sources). Many cantons additionally require that at least 80% of costs must be related to activities undertaken abroad. Outside Switzerland a company with the mixed company tax status may conduct any activities whatsoever.

In so far as a company fulfils the above criteria, it may apply to the appropriate cantonal tax authorities for a tax ruling entitling it to tax treatment analogous to the rules set forth above for domicile companies. The portion subject to cantonal and communal income tax generally varies from 5% to 25% of the foreign source income and is generally higher than in the case of domicile companies. The exact portion needs to be agreed on with the responsible cantonal tax authorities in the tax ruling.

The additional related statements set forth above for domicile companies are applicable.

D. Capital Tax

Capital tax is levied annually on the cantonal / communal tax level. The basis for the calculation of capital tax is in principle the company's net equity (i.e., share capital, paid-in surplus, legal reserves, other reserves, unappropriated retained earnings). The taxable base of companies also includes any provisions disallowed as deductions for tax purposes, any other undisclosed reserves as well as loan capital that economically has the character of equity capital under the Swiss thin capitalization rules (see section C.I.5.).

The tax rate varies from canton to canton and is dependent on the tax status of the company. The range is between 0.0675%-0.76% for companies subject to ordinary taxation and between 0.005%-0.176% for tax privileged companies.

E. Final assessments

The tax inspector will finally assess most Swiss taxes within a few years after the tax year in question. Once a tax has been finally assessed, the tax year will in principle not be reopened. The tax authorities reserve, however, the right to reopen a tax year in cases of tax fraud or tax avoidance where the information to make this determination was not available to the tax inspectors at the time the assessment was made. Statute of limitations for reopening final assessed tax periods is 10 years. The absolute statute of limitations (e.g., applicable where the original statute of limitations has been interrupted) is 15 years.

F. Withholding Taxes

A 35% federal withholding tax is levied at source on dividend distributions by Swiss companies on income from bonds and similar indebtedness by Swiss issuers, as well as certain distributions of income by Swiss investment funds and interest payments on deposits with Swiss banking establishments.

I. Dividends

Distributions made by a Swiss corporation, either on a regular basis, or upon its liquidation, whether declared or transferred as a hidden advantage (either by granting conditions not at arm's length or by not collecting an amount due according to arm's length principles) are subject to withholding tax upon distribution.

To the extent a hidden profit distribution is made or a dividend in kind is distributed, withholding tax is grossed up by the following formula (35% / 65% = 53.8%) unless the recipient of the dividend pays it. Furthermore, to the extent a hidden profit distribution is made, the withholding tax can under circumstances be non-refundable to the recipient in question (i.e., usually unless the income has been openly declared and taxed by the recipient).

For distributions to related companies located in Switzerland, the withholding tax obligation may be handled through a notification procedure. For distributions to other individuals and companies resident in Switzerland, the withholding tax is refundable so long as the recipient declares the respective income for income tax purposes.

Since January 1, 2005, a notification procedure also applies for dividend distributions to a foreign parent company that is resident in any state, with which Switzerland has concluded a tax treaty or is subject to the new EU-Bilateral Agreement (see section E IV below). In such cases the Swiss withholding tax is reduced to the residual withholding tax amount or to nil, based on the applicable tax treaty. The cross-border notification procedure may be applied for by a foreign shareholder to the Federal Tax Administration so long that the shareholder qualifies for the substantial shareholding rate on dividend distributions under the applicable tax treaty or the EU-Bilateral Agreement and some other conditions are met.

II. Interest

Interest payments on bonds and bank deposits are subject to Swiss withholding tax (not taking into account interest for late payment of commercial deliveries).

For withholding tax purposes, the definition of bonds is very broad and includes any form of indebtedness over CHF 500,000 on which interest is paid on identical terms and conditions to a plurality of creditors, i.e., 10 or 20 creditors depending on the kind of bond.

For interest payments to individuals and companies resident in Switzerland, the withholding tax is refundable so long as the recipient declares the respective income for income tax purposes. For foreign owners, there is no reduction at source of the Swiss withholding tax obligation. Residents of countries with which Switzerland has concluded a double tax treaty may claim reimbursement of excess Swiss withholding tax based on the rules of the applicable double tax treaty in question.

It is also noteworthy that no withholding tax is levied on interest payments from intercompany loans assuming arm's length interest payments are made (i.e., they do not constitute a hidden profit distribution) and the company does not qualify as a bank in the sense of the withholding tax law.

III. Royalties and Service Fees

No withholding tax is levied on royalties and service fees paid.

IV. Bilateral Agreements II with the European Union

In May 2004 Switzerland and the European Union (EU) agreed on eight bilateral agreements ("Bilateral Agreements II"), one of which is the Savings Tax Agreement providing for measures equivalent to those set forth in the EU Savings Tax Directive. To entice Switzerland to enter into the Savings Tax Agreement, the same agreement also incorporates language, practically identical to the current version of the EU Parent/Subsidiary Directive and the EU Interest/Royalty Directive. This means that Switzerland will in effect have access to usage of the respective EU directives as from July 1, 2005. Accordingly, dividends, royalty and interest payments between Switzerland and the EU will not be subject to withholding tax, provided that the conditions are fulfilled (exception: Spain which has opted out to negotiate with Switzerland separately, whereby a solution is close to being announced).

G. Stamp Taxes

I. Issuance Stamp Tax

Issuance stamp tax (often known as capital duty) on the issue and increase of the equity of Swiss corporations is levied at a rate of 1% on the fair market value of the assets contributed, with an exemption on the first CHF 250,000 of capital paid in, whether it is made in an initial or subsequent contribution.

A tax ruling may be applied for to exempt a multitude of transactions from issuance stamp tax. In particular, special rules allow for most reorganizations (mergers, share for share deals, spin offs and the like) to take place on a tax neutral basis so long as the assets of the local company remain in Switzerland. Under various circumstances, such transactions will be subject to a five year restriction period on the divestiture of assets or shares.

In addition, the transfer of an existing company located in another jurisdiction to Switzerland can oftentimes be effected without incurring Swiss issuance stamp tax (apart from cases where the company was formed abroad and transferred to Switzerland in an effort to avoid Swiss stamp taxes).

Issuance stamp tax is further payable in respect of the following instruments:

- bonds, which are defined for the purposes of this tax as bonds, promissory notes issued in sequence and similar paper, discount paper and any other evidence of indebtedness in the form of a debt security or traded as if there were a debt security which is intended for public placement as well as participations in loans granted to Swiss debtors
- money market papers, which are identical instruments to bonds with a fixed term of not more than 12 months, issued by a Swiss governmental body

The following tax rates apply:

- 0.12% of the nominal value for each year or part thereof up to the maturity of a bond
- 0.06% p.a. on the same basis for sub-participations and medium term bonds
- 0.06% p.a. on commercial paper: face value calculated at 1/360th for each day on which such paper is outstanding

II. Securities Transfer Stamp Tax

Swiss securities transfer stamp tax (often called "securities turnover tax") is levied on the transfer of Swiss and foreign securities in which Swiss securities dealers participate as contracting parties or as intermediaries. The ordinary tax rate of Swiss securities transfer stamp tax is 0.15% for securities issued by a resident of Switzerland and 0.3% for securities issued by a resident of a foreign country.

Tax is calculated based on the consideration of the securities traded. In the case that only one Swiss securities dealer is involved in a transaction, the dealer is liable for paying the entire tax due. Where two Swiss securities dealers are involved in a transaction, half of the tax is accounted for and reported by each registered securities dealer.

Swiss securities dealers are defined as any person professionally engaged in the buying or selling of securities for his own account or for another person, including Swiss banks and other Swiss bank-like institutions. Furthermore, the definition of Swiss securities dealers comprises:

- individuals, corporate entities and partnerships as well as permanent establishments and branches of foreign entities whose activity is mainly to trade in securities or to act as intermediaries for the purchase and sale of securities
- Swiss corporations and Swiss pension funds holding securities with a book value of more than CHF 10 million
- Swiss government, including Swiss cantons, Swiss communal authorities, and Swiss social security institutions
- remote members of a Swiss stock exchange with regard to Swiss titles, which are quoted on the Swiss stock exchange

Taxable securities include, but are not limited to, the following instruments:

- securities issued by domestic debtors such as bonds, certificates of deposits, debenture bonds, participating certificates, units in investment funds, bills of exchange and similar commercial paper
- securities issued by non-resident debtors if their economic function is similar to the above
- shares in Swiss and foreign corporations and investment funds, as well as
- documents covering participations in any of the securities referred to above

Options and many other derivative instruments are not subject to Swiss securities transfer stamp tax. However, the exercise of such financial instruments or derivatives may result in a taxable transfer of a security.

No Swiss securities transfer stamp tax is levied on:

- the issue and the redemption of shares and of bonds
- trading in Swiss and foreign money market papers (duration up to 12 months)
- the half of the tax relating to the foreign buyer or seller in case of the purchase and sale of foreign bonds
- the half of the tax relating to the foreign buyer or seller, as long as the foreign buyer or seller is a bank or a broker, in case of the purchase and sale of foreign shares
- the half of the tax relating to the Swiss securities dealer for the purchase from and into the trading books of a bank or of a securities dealer that is professionally engaged in trading

With the enactment of the Swiss merger law, no Swiss securities transfer stamp tax is in general levied in case of a merger or a reorganization in which a Swiss securities dealer is involved and taxable securities are transferred. Furthermore, the new merger law also provides an exemption from Swiss securities transfer stamp tax in case of a replacement of a participation. The above is in particular important for holding companies, which qualify as a Swiss securities dealer, as the new law provides for a much more flexible basis than under prior law in transferring shares tax neutrally.

As Swiss securities transfer stamp tax is one of the most complex and rapidly changing taxes in Switzerland, many exceptions and details thereto have not been set forth in this brief summary.

H. Value added tax (VAT)

1. Overview

Although Switzerland is not an EU Member State, its VAT system was adapted to the Sixth EC VAT Directive as a non-cumulative, multistage tax that provides for a deduction of input tax.

Accordingly Swiss VAT is levied as an indirect tax on most goods and services and applies to each stage of the production and distribution chain. It is designed as a supplier liability based tax (i.e., the liability is calculated on the consideration paid by the recipient).

2. Taxable Supplies

VAT is levied on the following types of transactions:

- deliveries of goods in (as well as to certain other locations like Liechtenstein considered to be part of Switzerland for VAT purposes) for consideration
- supply of services (as well as certain other locations considered to be Switzerland like Liechtenstein for VAT purposes) for consideration
- self-supplies
- receipt of certain services rendered abroad for consideration

The supply of goods for VAT purposes is not limited to what is considered a supply of goods under Swiss commercial law. The VAT regulations list a number of transactions that are deemed to be a supply of goods for VAT purposes (e.g., the maintenance of a machine would constitute a supply of goods under the VAT regulations).

3. Applicable Rates

The standard rate is 7.6%. Goods and services are generally subject to this rate. A 3.6% rate is levied on services in connection with the provision of accommodation, including breakfast. A 2.4% rate is levied on certain basic necessities such as delivery of water, food, non-alcoholic drinks, medicine, newspapers, fees for non-commercial TV and radio broadcasting etc.

4. Registration Requirements

The Swiss VAT regulations provide that any person or legal entity (e.g., a subsidiary, branch or sole trader) performing an income-producing commercial, professional or non-profit oriented activity is required to register for and to charge VAT, if the total of supplies of goods, services and self-consumption within Switzerland exceeds CHF 75,000 per annum.

Upon registration, the Federal Tax Administration will issue a VAT registration number to the taxpayer.

Foreign companies supplying goods or certain services to/within Switzerland are generally required to appoint a tax representative for VAT purposes.

5. Deductibility of Input Taxes

A business registered for VAT is liable for VAT on all taxable supplies (output tax) and will incur VAT on purchases for the business (input tax). In most cases, input taxes may be deducted from the amount of output taxes due. This being the case, VAT does not in general represent an additional burden for a business. Therefore, VAT only constitutes a real cost for the end-consumer or for a business involved in transactions for which no input tax can be recovered.

6. Exemption for Foreign Recipients

Certain services are VAT exempt (with credit) if rendered to a recipient domiciled abroad. The Swiss VAT law indicates a list of such services, which are taxable at the domicile of the recipient, and therefore, not subject to Swiss VAT if rendered to a foreign recipient (e.g., the transfer of intangible assets, royalties, marketing services, services of consultants, lawyers, management services, data processing services, telecommunication services etc.). Services that are not mentioned on this list are either taxable at the domicile of the service supplier or are subject to special rules as mentioned in the Swiss VAT law.

However, the VAT exempt nature of such service has to be proven by the underlying documents, such as invoices, agreements etc. Under all circumstances, it is very important that the documentation has been prepared in accordance with the strict formal requirements according to the Swiss VAT law.

I. Documentation requirements

For most Swiss taxes it is required that all relevant documentation is kept at the local Swiss entity. Generally, it is tolerated (although not allowed per se) to maintain documentation abroad so long as it is easily deliverable in one or two days time at the request of the tax authorities (i.e., in the case of a tax audit). Electronic storage of documentation is also allowed under the condition that the electronically stored documentation can be made available within a reasonable timeframe.

For most taxes the tax returns and supporting documentation should be retained for 10 years. For VAT purposes, the general retention period is 10 years, whereas it is 20 years for documentation concerning immovable property.

J. International Tax

1. Controlled Foreign Corporation (CFC Legislation)

Switzerland does not have any CFC legislation nor does it intend to introduce such legislation in the foreseeable future.

2. Treaty Network

Switzerland has concluded treaties with all important industrial countries and many other countries. Most of these treaties are patterned on the principles of the OECD model convention. There are currently approximately 70 tax treaties in effect plus 33 social security tax treaties plus as of July 1, 2005 the EU-Bilateral Agreement.

3. Anti-abuse Decree

Switzerland has had a unilateral anti-abuse decree in place since 1962. This has been put into place to discourage non-Swiss persons from trying to take advantage of the Swiss treaty network except under bona fide circumstances.

The original anti-abuse decree of 1962 and the relevant circular letter of the Federal Tax Administration state four specific requirements that have to be cumulatively fulfilled by a directly or indirectly foreign controlled Swiss entity intending to use the Swiss treaty network:

1. the Swiss company must be adequately capitalized (which is interpreted to mean that interest bearing loans may not exceed six times the Swiss company's equity; although today replaced with more specific thin-capitalization rules)

2. not more than 50% of income that is subject to withholding tax benefits under a treaty can be paid, either directly or indirectly, to non-residents of Switzerland (i.e., in the form of expenditures or depreciation)
3. a minimum of 25% of the income subject to treaty relief in the previous year must be distributed as dividends in the current year
4. the interest rates on interest bearing loans have to comply with the safe haven interest rates published annually by the tax authorities (see C.I.3.1)

In addition, the 1962 Circular letter also states two other possibilities of treaty abuse, fiduciary relationships and foreign-controlled family foundations or partnerships.

With effect from January 1, 1999 the anti-abuse decree was revised and the new 1999 Circular letter of the Federal Tax Administration has eased some of the requirements for qualifying companies (except with regard to companies in Belgium, France and Italy whose tax treaties have adopted as part of their text the language set forth in the original version of the anti-abuse decree).

As of January 1, 1999 first two requirements must no longer be fulfilled by companies, which meet the conditions of any of the following tests:

- active trade or business test (i.e., the company is engaged in an active trade or business from where the income that requires protection from a double tax treaty is derived)
- direct stock exchange test (i.e., the majority of the shares of the Swiss company is regularly traded at a recognized stock exchange)
- indirect stock exchange test (i.e., 50% of the equity of the company claiming treaty benefits is directly owned by a Swiss company that fulfills the direct stock exchange test)
- pure holding company test (i.e., the company exclusively manages and finances participations)

For all companies that cannot benefit from one of the above tests, the first two requirements of the 1962 Circular letter still apply.

The 1999 Circular letter also replaced the third requirement of the 1962 Circular with a cross-reference to Swiss domestic withholding tax law. Therefore, a profit distribution policy is deemed to be appropriate if the levy of withholding tax is not jeopardized. Swiss withholding tax is considered to be jeopardized if cumulatively:

- more than 80% of the capital of the company is directly or indirectly owned by non-Swiss residents
- the majority of the assets is located abroad or most of the claims relate to non-Swiss creditors
- the company does not distribute an appropriate amount of its net income as an annual dividend. A dividend distribution of 6% of the equity is deemed to be appropriate

It is important to note that there is a long standing Swiss tradition to discuss the issues described above with the relevant tax authorities in advance. The tax authorities are prepared to issue binding tax rulings within a short time (generally four to six weeks).

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