

Tax on corporate transactions in Switzerland: overview

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TAX AUTHORITIES

1. What are the main authorities responsible for enforcing taxes on corporate transactions in your jurisdiction?

Federal tax authorities

The federal tax authorities are responsible for the enforcement of the following federal taxes:

- Withholding tax.
- Securities transfer stamp tax.
- Securities issuance stamp tax.
- Value added tax (VAT).

Cantonal and communal tax authorities

The cantonal and communal tax authorities are responsible for the enforcement of federal, cantonal and communal corporate income taxes from:

- Companies domiciled within their territory.
- Foreign companies operating through a permanent establishment (PE) within their territory.
- Foreign companies that are effectively managed and controlled from their territory.

These tax authorities are also responsible for the enforcement of the cantonal and communal equity taxes from the same companies as mentioned above. The basis of the assessment of the equity tax consists of the share capital, the capital reserves, the reserves built of taxed profits and the deemed equity. Under the Swiss thin capitalisation rules liabilities are treated as equity if the liabilities economically have the same meaning for the company as equity would have. The tax is payable by the company in question. Depending on the cantonal and communal laws, the equity tax rates vary from 0.1 per mille up to 5.25 per mille. For holding, domiciliary and mixed companies the tax rates range between 0.01 per mille up to 0.5 per mille. Some tax laws provide that the corporate income tax can be credited against the equity tax.

Depending on the cantonal tax law (Switzerland consists of 26 cantons with individual tax laws), the cantonal tax authorities or the communal tax authorities are also competent for the enforcement of:

- Real estate capital gains tax.
- Real estate transfer tax.

Pre-completion clearances and guidance

2. Is it possible to apply for tax clearances or obtain guidance from the tax authorities before completing a corporate transaction?

It is a well-established practice in Switzerland that the tax authorities grant advance tax rulings. In order to be binding, the application must be addressed to the competent tax authority and set out all relevant factual circumstances of the intended transaction. Moreover, the transaction must be implemented exactly as described in the granted advance tax ruling.

MAIN TAXES ON CORPORATE TRANSACTIONS Transfer taxes and notaries' fees

3. What are the main transfer taxes and/or notaries' fees potentially payable on corporate transactions?

Federal securities issuance stamp tax

Securities issuance stamp tax is triggered when a shareholder's total contribution to a Swiss domiciled company's equity exceeds CHF1 million. Any shareholder's contribution above this threshold is subject to the securities issuance stamp tax at a rate of 1%, irrespective of whether the shareholder receives shares in exchange for his contribution or contributes without consideration. The company in question is liable for payment of the securities issuance stamp tax. Exemptions apply for certain restructurings and recapitalisations.

Federal securities transfer stamp tax

Securities transfer stamp tax is due on the consideration paid for the transfer of taxable securities provided a securities dealer (as defined in the Swiss Federal Stamp Duty Act) is involved in the transaction. A securities dealer can be involved in the transaction as a contractual party or as an intermediary.

Security dealers are banks and financial institutions (within the scope of the Swiss Banking Act), security traders and Swiss companies that hold taxable securities with a book value of more than CHF10 million according to their latest balance sheet.

Taxable securities include, for example, shares, bonds (as defined in the Federal Stamp Duty Act) and units in collective investment schemes.

The securities transfer stamp tax is imposed on the purchase price. The tax rate for the transfer of Swiss securities is 0.15%, and the rate for the transfer of non-Swiss securities is 0.3%. The security dealer is liable for the federal securities transfer stamp tax but usually the parties to the transaction contractually agree who bears the tax instead.

Transactions made in connection with company restructurings are not subject to securities transfer stamp tax.

Real estate transfer tax

A few cantons and communes levy real estate transfer tax on the:

- Transfer of Swiss real estate.
- Sale of the majority of the shares in Swiss real estate companies.
- Establishment of mortgages.

The rates vary considerably and can comprise up to 3.3% of the fair market value of the transferred real estate.

Notaries' fees

Under Swiss law, certain acts, such as the incorporation of a Swiss company in the form of a limited liability company (*Gesellschaft mit beschränkter Haftung*) or a corporation (*Aktiengesellschaft*), must be notarised in order to be valid. Furthermore, a notarial deed is required to transfer Swiss real estate.

The calculation of the notaries' fees and the liability for the payment of these fees is determined by the applicable cantonal law.

Land register charges

Any transfer of Swiss real estate must be registered in the local land register. Land register charges are levied upon the registration of such a transfer. Considering that land registers are governed by cantonal laws, the amount payable and the liability for the payment of the land register varies from canton to canton.

Corporate and capital gains taxes

4. What are the main corporate and/or capital gains taxes potentially payable on corporate transactions?

Corporate income taxes

Federal, cantonal and communal corporate income taxes are levied on the profits of:

- Swiss domiciled companies.
- Foreign companies that are effectively managed and controlled from Switzerland.
- Foreign companies with a permanent establishment (PE) in Switzerland.

In principle, the taxable profits (including both income and capital gains) are determined on the basis of a company's financial statements (balance sheet, profit and loss statement). In some cantons, however, real estate capital gains are excluded from the taxable profits and are taxed separately with a special real estate capital gains tax (*see below, Real estate capital gains tax*).

Under Swiss tax law the corporate income tax base comprises the company's worldwide profits, except for the profits of:

- Foreign PEs of a Swiss company. A business is considered as a foreign PE if a fixed place outside of Switzerland exists in which a substantial part of the Swiss company's business activity is carried out.
- Non-Swiss real estate.

The federal, cantonal and communal tax authorities impose corporate income taxes. The federal corporate income tax rate of 8.5% is levied on the company's profits. Considering that in determining the taxable profits the corporate income tax is deductible, the effective federal corporate income tax rate is 7.8%.

A Swiss company can also deduct the cantonal and communal income taxes. The standard cantonal and communal effective tax rates range between 10.9% and 19.3%, depending on the company's domicile. If the company benefits from a special cantonal tax regime like the holding, domiciliary or mixed company status, the effective total corporate income tax rate varies between 7.8% and 12.5%.

A Swiss company can carry forward losses for seven years and set them off against taxable profits. A carry back of the losses against taxable profits is not possible.

There is no group tax regime available for corporate income taxes. A group tax regime is only available for VAT.

Real estate capital gains tax

Some cantons or communes levy a separate real estate capital gains tax on the transfer of Swiss real estate or on the sale of the majority of the shares in a Swiss real estate company. Consequently, the cantons with such a tax system exempt the capital gains that are obtained on these transactions from the corporate income tax, and instead tax the capital gains separately with the real estate capital gains tax.

Value added and sales taxes

5. What are the main value added and/or sales taxes potentially payable on corporate transactions?

VAT

In a corporate transaction, VAT at the standard rate of currently 8% is potentially due:

- On the supply of goods by Swiss businesses that are liable for Swiss VAT purposes. Generally, asset transfers qualify as taxable deliveries of goods.
- On the supply of services by Swiss businesses that are liable for Swiss VAT purposes. Generally, the transfer of rights (such as IP rights) qualifies as a taxable supply of services.
- On the import of goods.
- On services provided by foreign businesses, which are not registered for VAT purposes in Switzerland.

The supply of certain goods and services are exempt from VAT, particularly financial services transactions, real estate transactions and security transactions (including share deals, *see Question 9*). Under certain conditions a VAT opting-in is available for some exempt transactions, such as real estate transactions.

Any Swiss business, which regardless of its legal form or its purpose, conducts business activities in its own name in Switzerland and generates a VAT relevant turnover of at least CHF100,000 within a calendar year, is subject to VAT. Turnovers generated outside Switzerland and Liechtenstein, as well as exports, are not VAT relevant. If a Swiss business does not reach the CHF100,000 threshold, it is nevertheless eligible to register for the VAT so that it benefits from the input VAT deduction. The business activities of holding companies, which hold at least one participation of 10% in another company's share capital, are considered as businesses for VAT purposes. Companies that are subject to VAT are eligible for a partial or full refund of the input VAT.

If foreign businesses, which are not registered for VAT purposes, provide services or supply goods and work that is not subject to import tax to a Swiss VAT liable business, the Swiss business is liable for VAT. Even if the foreign business provides the above mentioned services and goods to a Swiss non VAT liable business the Swiss business will be liable for VAT if the value of the services and work provided amounts to more than CHF10,000 in a calendar year (acquisition tax).

Swiss companies and PEs that are under the same control and prefer to be treated as a consolidated group for Swiss VAT purposes, can form a VAT group (*see Question 9, VAT*). Group internal turnover is outside the scope of VAT. Members of a VAT group are jointly liable for each other's VAT.

Usually, the VAT due must be paid, but in some cases a notification procedure is applicable instead (*see Question 15, VAT*).

Other taxes on corporate transactions

6. Are any other taxes potentially payable on corporate transactions?

Dividend withholding tax

A corporate transaction may trigger the dividend withholding tax, if reserves built up of the company's profits, or hidden reserves, are reduced (*see Question 8*).

Taxes applicable to foreign companies

7. In what circumstances will the taxes identified in Questions 3 to 6 be applicable to foreign companies (in other words, what "presence" is required to give rise to tax liability)?

Corporate income taxes

A foreign company conducting business activities through its PE in Switzerland is liable to pay corporate income taxes on its Swiss profits.

If a foreign company is managed and controlled from Switzerland, the foreign company is deemed to be effectively managed in Switzerland. Consequently, the foreign company is fully liable to pay corporate income taxes on its worldwide profits, unless a double tax treaty protects the company from being subject to tax in Switzerland.

Furthermore, a foreign company owning Swiss real estate pays corporate income taxes, limited to the profits allocated to the real estate.

Real estate capital gains tax

If a canton or commune levies real estate capital gains tax separately from the corporate income taxes, any foreign company disposing of its Swiss real estate or disposing of the majority of the shares in a Swiss real estate company is subject to real estate capital gains tax where the real estate is located (*see Question 4*).

VAT

As soon as a foreign company constitutes a PE in Switzerland, it may become subject to VAT. Moreover, a foreign company delivering goods or rendering certain services (such as, for example, services regarding Swiss real estate) within Switzerland may become liable to Swiss VAT. Finally, an importer of goods must pay import VAT regardless of where the company is domiciled.

Dividend withholding tax

Foreign companies are subject to dividend withholding tax if their legal domicile is in Switzerland or if they are effectively managed and controlled from Switzerland.

Securities issuance stamp tax

Foreign companies do not trigger securities issuance stamp tax if:

- They are not established in Switzerland.
- They do not relocate to Switzerland shortly after their incorporation abroad.

- They are not effectively managed and controlled from Switzerland.

Securities transfer stamp tax

Foreign companies must pay securities transfer stamp tax if a Swiss securities dealer is involved in a taxable security transaction as a contractual party or as an intermediary. The domicile of the seller and buyer of shares is irrelevant.

Real estate taxes

Foreign companies are subject to real estate transfer tax only if they transfer Swiss real estate.

Notaries' fees

Foreign companies need to pay notaries' fees if a transaction requires a public deed.

Land register charges

Foreign companies must pay land register charges if they are involved in a transaction with Swiss real estate.

DIVIDENDS

8. Is there a requirement to withhold tax on dividends or other distributions?

Dividend withholding tax of 35% is due on open and hidden dividend distributions of Swiss companies. Generally, the Swiss company in question must pay the withholding tax to the federal tax authorities within 30 days after the maturity of the dividend distribution.

Foreign shareholders are entitled to a partial or full refund of the withholding tax if an applicable double taxation treaty provides for such a refund.

A notification procedure is available to:

- Intra-group dividend distributions paid within Switzerland.
- Dividend distributions paid by a Swiss company to a foreign company if a respective double tax treaty exists.
- Dividend distributions paid from a Swiss subsidiary to its EU parent, under the condition that the EU parent company held directly at least 25% of the Swiss company's capital for at least two years (*article 15 of the bilateral Savings Tax Agreement between the EU and Switzerland*).

The distributions of a company's capital reserves, which stem directly from shareholders and were booked on a separate account in the balance sheet of the company, do not trigger any withholding tax.

SHARE ACQUISITIONS AND DISPOSALS

Taxes potentially payable

9. What taxes are potentially payable on a share acquisition/share disposal?

Securities transfer stamp tax

Securities transfer stamp tax is levied on a share sale if a Swiss securities dealer is involved as a party or as an intermediary (*see Question 3*).

Corporate income taxes

A Swiss company disposing of its shares must include any realised capital gains in the financial statement in order to determine the profits. Capital losses are deductible. The profits will be subject to corporate income taxes (*see Question 4*).

Real estate capital gains tax and real estate transfer tax

Real estate capital gains tax or real estate transfer tax may be due on the sale of the majority of the shares in a Swiss real estate company (see *Question 4*).

VAT

Sales of shares are exempt from VAT. Consequently, input tax recovery issues may arise for the seller and the buyer unless the contractual parties qualify as holding companies (see *Question 5*).

Exemptions and reliefs

10. Are any exemptions or reliefs available to the liable party?

Securities transfer stamp tax

Securities transfer stamp tax on the sale of shares can be avoided if either no Swiss securities dealer is involved, or Swiss shares are transferred in connection with a tax-neutral restructuring (see *Question 26*). Furthermore, if the proceeds from the sale of a participation of at least 10% in a company's capital are reinvested by purchasing a participation in another company, no securities transfer stamp tax will be levied on the replacement of the participation (see below, *Corporate income taxes: Participation relief*).

Corporate income taxes

Participation relief. Companies holding a participation of at least 10% of another company's share capital, or a participation with a fair market value of at least CHF1 million, for longer than one year may benefit from a participation relief for corporate income tax purposes when disposing of the shares.

Participation relief is a tax credit and not a deduction. First, the corporate income tax is assessed based on the total business profits including the capital gains on the sale of the participations. Second, the profits from the participation (gross income minus the management expenses and the financial expenses) are determined. The profits from the participation are then compared with the total business profits, including the capital gains of the participation, in order to determine the discount as a percentage (that is, the participation relief). For example, if the participation profits amount to 50% of the total profits, the corporate income tax will be reduced by 50%.

Restructuring. No corporate income tax is triggered when Swiss companies transfer shares in connection with a tax-neutral restructuring (see *Question 26*).

Replacement of participation. A company that sells a participation of at least 10% in another company's share capital, which it owned for more than one year, and reinvests the sales proceeds in participations of another company within one to three years, may roll over the undisclosed reserves of the sold shares to the newly acquired shares and no corporate income taxes are due.

Holding, domiciliary and mixed companies. Cantonal tax laws provide special tax statuses for holding, domiciliary and mixed companies. Provided that a company qualifies for one of these statuses, the capital gains from a share sale are exempt from cantonal and communal corporate income taxes (see *Question 4*). For the federal corporate income tax, a participation relief is available if a participation of at least 10% of another company's share capital is sold (see above).

Tax advantages/disadvantages for the buyer

11. Please set out the tax advantages and disadvantages of a share acquisition for the buyer.

Advantages

The buyer can use the target company's carried-forward tax losses that occurred before the share sale.

Capital reserves of the target company, which were paid-in by the seller, can be distributed to the buyer without triggering dividend withholding tax.

Disadvantages

The goodwill of the target company is included in the share purchase price and cannot tax-effectively be used for a reduction of the corporate income taxes.

Even if the buyer uses a company as an acquisition vehicle, the buyer may not be able to set off financing costs against future profits of the target company, because no group tax regime exists for corporate income taxes and the tax authorities do not accept debt push down from an acquiring company into the target company.

Moreover, the buyer assumes deferred taxes that are usually taken into consideration when determining the purchase price. Deferred withholding taxes on distributable reserves may bear a high risk for the buyer (*Altreservenpraxis*).

Tax advantages/disadvantages for the seller

12. Please set out the tax advantages and disadvantages of a share disposal for the seller.

Advantages

The seller may benefit from a share sale because the corporate income tax on the capital gains realised on the sale of the shares is exempt due to:

- The participation relief, provided a participation of at least 10% in another company's share capital is sold (see *Question 10*).
- The replacement of participations, which is generally used by the seller instead of the participation relief when losses or carried forward losses exist in the selling company (see *Question 10*).
- A tax-neutral restructuring within a group of companies (see *Question 26*).

Disadvantages

Losses carried forward in the target company cannot be set off against capital gains from the sale of the shares. However, if the participation relief or the replacement of the participation is available, no disadvantage results (see above, *Advantages*).

Transaction structures to minimise the tax burden

13. What transaction structures (if any) are commonly used to minimise the tax burden?

Corporate income taxes and capital gains tax

Companies usually sell participations of at least 10% in order to benefit from the participation relief. By virtue of this relief, the corporate income tax levied on the capital gains on the sale of such participations can substantially be reduced or avoided entirely (see *Question 10*). Alternatively, holding structures are commonly used to minimise the tax burden.

ASSET ACQUISITIONS AND DISPOSALS

Taxes potentially payable

14. What taxes are potentially payable on an asset acquisition/asset disposal?

Corporate income taxes and capital gains tax

Corporate income taxes are levied on the capital gains resulting from the sale of assets. The sale of Swiss real estate also triggers corporate income taxes unless the cantonal tax system provides for a special real estate capital gains tax to apply (*see Question 4*).

VAT

The sale of assets by a vendor with its place of supply within Switzerland is subject to VAT at a rate of 8% (*see Question 5*). In some cases the buyer's VAT liability is settled through a notification procedure (*see Question 15*).

Real estate transfer tax and notaries' fees

The sale of Swiss real estate may be subject to real estate transfer tax and notaries' fees (*see Question 3*).

Exemptions and reliefs

15. Are any exemptions or reliefs available to the liable party?

Corporate income taxes and real estate capital gains tax

Replacement of operational fixed assets (rollover relief). For corporate income tax purposes, rollover relief is granted for capital gains resulting from the sale of operational fixed assets that are used by the company in its business, if the sales proceeds are reinvested in other operational fixed assets in Switzerland within a period of up to three years. Real estate may also qualify as operational fixed assets.

In cantons, which levy a separate real estate capital gains tax, this tax will not be triggered if the requirements for a replacement are met (*see above*).

The taxation of the capital gains will be deferred until the replaced operative business asset is disposed of without replacement.

Restructuring. No corporate income tax is triggered when Swiss companies transfer assets, including real estate, in connection with a tax-neutral intra-group restructuring (*see Question 26*).

Real estate transfer tax

A tax-neutral restructuring may be exempt from real estate transfer tax (*see Question 3*).

VAT

If the seller and the buyer are taxable persons for VAT purposes, and taxable assets are sold between related parties, the VAT liability is compulsorily settled through a notification procedure for transactions that qualify as:

- Restructuring (*see Question 26*).
- A transfer of all or part of the assets of a business under the Merger Act.

However, if the parties are not related, the notification procedure is only compulsory for the cases noted above if the VAT due on the sales price exceeds CHF10,000. If this threshold is not exceeded, the notification procedure is only optionally applicable.

By using the notification procedure, the buyer will step into the seller's VAT measurement bases and the level of use, entitling him to an input tax deduction in respect of the transferred assets.

Tax advantages/disadvantages for the buyer

16. Please set out the tax advantages and disadvantages of an asset acquisition for the buyer.

Advantages

The buyer benefits from the following tax advantages in an asset acquisition:

- By writing off the acquired assets, including goodwill, tax-effectively.
- By setting off financing costs against future profits.

Disadvantages

The buyer cannot use any losses carried forward by the selling company.

Tax advantages/disadvantages for the seller

17. Please set out the tax advantages and disadvantages of an asset disposal for the seller.

Advantages

The seller can benefit from an asset sale:

- By setting off potential capital losses from the sale against profits.
- By setting off losses carried forward against capital gains from the sale.

Disadvantages

The disadvantages of an asset sale for the seller may be that corporate income taxes are due on the capital gains from the asset sale, or that the sale of real estate may be subject to cantonal real estate capital gains tax and transfer tax (*see Question 3*).

Transaction structures to minimise the tax burden

18. What transaction structures (if any) are commonly used to minimise the tax burden?

Spin-off

The asset deal can be structured as a tax-neutral spin-off with a subsequent sale of the shares in the subsidiary. Firstly, the assets that form a business unit are transferred to a newly established subsidiary in a tax-neutral spin-off. That means that the transferring company, as well as the receiving subsidiary, will maintain operative business units after the spin-off. Subsequently, the shares in the subsidiary are sold because no lock-up period applies (*see Question 26*).

LEGAL MERGERS

Taxes potentially payable

19. What taxes are potentially payable on a legal merger?

If a legal merger does not qualify as a tax-neutral restructuring (*see Question 26*), the following taxes can be triggered:

- Corporate income taxes (*see Question 4*).
- Real estate capital gains tax (*see Question 4*).
- Real estate transfer tax (*see Question 3*).
- Securities transfer stamp tax (*see Question 3*).

- Securities issuance stamp tax (*see Question 3*).
- Dividend withholding tax (*see Question 8*).
- VAT (*see Questions 5 and 15*).

Exemptions and reliefs

20. Are any exemptions or reliefs available to the liable party?

A legal merger qualifies as a tax-neutral restructuring (*see Question 26*) if the assets and liabilities are transferred at tax book value and the acquiring company continues to have an unlimited corporate tax liability in Switzerland. The tax-neutrality encompasses:

- Corporate income taxes.
- Real estate capital gains tax.
- Real estate transfer tax.
- Securities transfer stamp tax.
- Securities issuance stamp tax.
- Dividend withholding tax.
- VAT.

Usually, a merger with a transfer of the assets at tax book value is also tax-neutral for the shareholder company unless:

- The reserves, which stem from the profits, are destroyed through the merger. This limitation applies if one of the merging companies is insolvent and the carry forward losses are set off against the profit reserves.
- Dividend distributions are made to the shareholder company out of reserves, which stem from profits and not from capital reserves, in the form, for example, of cash consideration.

Both the destroyed profit reserves and the cash consideration qualify as dividend income. This dividend income is subject to the corporate income tax of the shareholder company (participation relief may be available) and the dividend withholding tax (*see Question 8*).

Transaction structures to minimise the tax burden

21. What transaction structures (if any) are commonly used to minimise the tax burden?

Merger

A legal merger is usually structured in such a way that it meets the requirements to qualify as a tax-neutral restructuring (*see Question 20*).

JOINT VENTURES

Taxes potentially payable

22. What taxes are potentially payable on establishing a joint venture company (JVC)?

The taxes and fees that are potentially payable include:

- **Securities issuance stamp tax.** This tax is levied at a rate of 1% on the shareholders' contributions to the equity of a Swiss company that exceed the total threshold of CHF1 million (*see Question 3*).
- **VAT.** Payable for some assets, like intellectual property. The transfer of securities, in particular shares, is exempt, as is the transfer of real estate (*see Question 5*).

- **Securities transfer stamp tax.** Payable if a Swiss securities dealer is involved (*see Question 3*).
- **Notaries' fees.** Payable for the execution of required public deeds (*see Question 3*).
- **Land register charges.** Payable for entries onto the land register (*see Question 3*).

Exemptions and reliefs

23. Are any exemptions or reliefs available to the liable party?

Securities issuance stamp tax

If the setting up of the JVC is structured like a merger so that it meets the requirements of a tax-neutral restructuring, the securities issuance stamp tax is not levied (*see Question 26*). Moreover, the JVC may partially be funded through shareholders' loans that do not trigger securities issuance stamp tax.

VAT

The JVC is eligible to claim the refund of the input VAT if it registers for VAT purposes.

Securities transfer stamp tax

Securities transfer stamp tax on the transfer of securities, in particular shares, is only due if a Swiss securities dealer acts as a party or intermediary. If no Swiss securities dealer is involved, the tax will not be imposed (*see Question 3*).

Transaction structures to minimise the tax burden

24. What transaction structures (if any) are commonly used to minimise the tax burden?

Quasi-merger or spin-off

Securities issuance stamp tax can be avoided by setting up the JVC in a transaction that qualifies as a quasi-merger or as a spin-off because such tax-neutral restructuring leads to an exemption from the securities issuance stamp tax (*see Question 26*).

COMPANY REORGANISATIONS

Taxes potentially payable

25. What taxes are potentially payable on a company reorganisation?

If a company's restructuring does not fulfil the requirements for a tax-neutral restructuring (*see Question 26*) the following taxes are potentially payable:

- Corporate income taxes (*see Question 4*).
- Real estate capital gains tax (*see Question 4*).
- Securities transfer stamp tax (*see Question 3*).
- Securities issuance tax (*see Question 3*).
- Dividend withholding tax (*see Question 8*).
- VAT (*see Question 5*).

Exemptions and reliefs

26. Are any exemptions or reliefs available to the liable party?

Tax-neutral restructuring

If a company's reorganisation qualifies as tax-neutral restructuring under the Federal Direct Tax Act, the company will not have to pay the taxes mentioned above (see *Question 25*).

Restructurings mainly include:

- **Mergers.** See *Question 19*.
- **Vertical demergers (spin-off and split-off).** The transfer of assets by a company to another company in return for shares qualifies as restructuring if:
 - the demerging company transfers a whole business unit at tax book value; and
 - after the transfer the demerging and the receiving company continue to carry on their businesses through business units in Switzerland where both remain liable to Swiss taxes.
 - There is no lock-up period applicable for the transferred assets or shares. Vertical demergers are also available to holding, finance, licensing and real estate companies, but the companies must meet additional requirements so that the transferred assets are considered as business units.
- **Share-for-share exchanges (quasi-mergers).** A share-for-share exchange is tax-neutral if a company exchanges its own shares for shares in another company at tax book value and immediately after the transaction, controls at least 50% of the voting rights in the other company. The use of consideration other than its newly issued or own shares does not prevent the transaction from being tax-neutral, provided the total consideration does not exceed 50% of the effective value of the transferred shares.
- **Horizontal demerger (hive downs).** A company can transfer business units or fixed business assets tax-neutrally to its Swiss subsidiary at tax book value provided that neither the transferred assets nor the shares in the subsidiary are sold within a five-year lock-up period after the transaction. No lock-up period applies for the transfer of participations of at least 10%.
- **Intra-group transfers.** Group companies are defined as companies that are under the unified control of the same company that holds at least 50% of the voting rights of its subsidiaries. A group company can tax-neutrally transfer at tax book value shares of at least 20% in another company's capital, business units or fixed business assets to another group company within Switzerland, if the receiving company remains liable to Swiss taxes after the transaction and, if the transferred assets or the unified control are retained during a five-year lock-up period after the transaction. The cantonal tax authorities may levy corporate income tax if the acquiring company benefits from a special cantonal tax status.
- **Change of legal form.** A company can change its legal form into another legal entity. Such a transformation is tax-neutral, provided that the tax book values remain unchanged and the company continues to be liable to Swiss taxes.

Transaction structures to minimise the tax burden

27. What transaction structures (if any) are commonly used to minimise the tax burden?

All of the tax-neutral restructuring transactions mentioned above are commonly used in structuring corporate reorganisations (see *Question 26*).

RESTRUCTURING AND INSOLVENCY

28. What are the key tax implications of the business insolvency and restructuring procedures in your jurisdiction?

For Swiss tax purposes a company is considered insolvent if its liabilities are not covered by the assets anymore and the company no longer has disclosed and undisclosed reserves against which it could set off its losses.

Corporate income taxes

The following recapitalisation measures are corporate income tax-neutral. The inflow of capital qualifies as a contribution to the capital reserves. Consequently, loss carry-forwards remain available to be set-off against future profits:

- **Reduction of capital with a subsequent increase in capital.** The company's nominal capital is reduced without repayment of funds. Subsequently, the capital is increased by the shareholders' capital contributions.
- **À fonds-perdu grants (non-repayable loans) by shareholders.** Contributions without considerations granted by shareholders.
- **Debt forgiveness by shareholders.** This is of a loan that a third party would not have granted at the same conditions or of a loan that is qualified as equity under the thin capitalisation rules.

Funds contributed by other recapitalisation measures are deemed to be extraordinary income. The resulting profits must be set off against losses and carry-forward losses. These measures include:

- Debt forgiveness by a third party or by a shareholder of a loan that a third party would have granted at the same conditions.
- Contributions without considerations granted by a third party.

Securities issuance stamp tax

Recapitalisation funds of up to CHF10 million are exempt from securities issuance stamp tax. On request, if the imposition of the tax would cause hardship to the company, the federal tax authorities may waive the tax.

Dividend withholding tax

Recapitalisation measures do not generally trigger dividend withholding tax, unless an insolvent company is involved in a merger and profits reserves are destroyed (see *Question 20*).

VAT

Recapitalisation measures that qualify as contributions to capital for corporate income tax purposes are not deemed to be a consideration for VAT so that the input tax deduction will have to be reduced in proportion of the taxable VAT turnover to the non-taxable VAT turnover of the capital contribution.

SHARE BUYBACKS

Taxes potentially payable

29. What taxes are potentially payable on a share buyback? (List them and cross-refer to Questions 3 to 6 as appropriate.)

Dividend withholding tax

A share buyback qualifies either as:

- Ordinary purchase, with the effect that no dividend withholding tax is triggered (*see Question 6*).
- Partial liquidation. If the share buyback leads to a partial liquidation of the company, be it that the shares are bought back to achieve a capital reduction or that the buyback is treated as a partial liquidation (*see Question 30*), a dividend withholding tax of 35% is due on the difference between the repurchase price and the nominal value of the redeemed shares plus the respective proportion of the capital reserves on the shares.

Exemptions and reliefs

30. Are any exemptions or reliefs available to the liable party?

A share buyback qualifies as an ordinary purchase without triggering dividend withholding tax if the company cumulatively meets all of the following requirements:

- The company does not buy back the shares for a capital reduction.
- Does not hold more than 10% of its own share capital after the buyback. If the company holds more than 10% of its own shares, the repurchase of the shares exceeding the threshold of 10% is reclassified as a partial liquidation and dividend withholding tax is due.
- Sells the 10% shares within six years. If the company does not meet this deadline, the purchase is reclassified as a partial liquidation and dividend withholding tax is levied.

Transaction structures to minimise the tax burden

31. What transaction structures (if any) are commonly used to minimise the tax burden?

A company intending to buy back shares for a capital reduction usually opens up a second trading line in order to optimise the purchase from a withholding tax point of view.

If a company does not buy back shares for a capital reduction, it must comply with the 10% share buyback limit and sell the redeemed shares within a six-year period (*see Question 30*).

PRIVATE EQUITY FINANCED TRANSACTIONS: MBOS

Taxes potentially payable

32. What taxes are potentially payable on a management buyout (MBO)?

MBOs are often structured as share deals, which are subject to the usual share deal taxes (*see Question 9*).

Generally, a Swiss resident share seller who is an individual that held the sold shares in his private property generates tax-free private capital gains and no income taxes are imposed on these capital gains. However, if a Swiss resident individual sells at least 20% in another company's shares to a company or an entrepreneur, and the buyer uses within five-years after the sale some substance (distributable profits and profit reserves) of the sold company to finance the purchase price of the shares, the seller's realised capital gains will be reclassified as taxable dividend income.

Exemptions and reliefs

33. Are any exemptions or reliefs available to the liable party?

There are no special reliefs available for MBOs.

Transaction structures to minimise the tax burden

34. What transaction structures (if any) are commonly used to minimise the tax burden?

The management often acquires the shares through a newly established holding company. Depending on how the holding company is financed, the securities issuance stamp tax may be due.

A debt push down from the acquiring holding company into the target company is not possible because the Swiss tax law does not recognise any tax consolidation and a merger between the holding company and the target company would be regarded as abusive by the tax authorities. As a result, the share sales price is kept as low as possible, by for example reducing the equity of the target company by dividend payments or capital reductions before the sale.

REFORM

35. Please summarise any proposals for reform that will impact on the taxation of corporate transactions.

Corporate income taxes

In September 2014, the Swiss Federal Council initiated the consultation on the corporate income tax reform III. By introducing favourable revised corporate income tax rules, Switzerland intends to remain a top jurisdiction for multinational companies, despite the abolishment of the special cantonal tax regimes such as holding, domicile and mixed company status and despite the abolishment of the special favourable taxation of principal companies and finance branches on the federal level. All these tax regimes have been considered as harmful tax practices by the OECD, G20 and the EU and have therefore come under intense international pressure.

The reform would abolish the cantonal tax regimes for holding, domicile and mixed company status and replace them on the cantonal and communal level with the following more internationally acceptable measures:

- **Notional interest deduction.** If a company's equity is exceptionally high, a notional interest deduction will be available on the proportion of the equity that exceeds as "safety-equity" the average needed equity in order to reduce the taxable profits.
- **Licence box rule.** Up to 80% of the net royalty-fee income generated from intellectual property rights will be taxed separately from the company's profits, in a licence box, at a reduced tax rate. IP rights do not include trade mark rights.

- **Step-up in basis for holding, domicile and mixed companies.** Companies that generated undisclosed reserves and developed goodwill while they operated under a special cantonal tax regime, like for example, the holding, domicile or mixed company regime, will be eligible to a step-up in basis on the undisclosed reserves and the self-developed goodwill when the company switches to an ordinary tax regime. The step-up in basis will have to be written down according the straight-line method within ten years.
- **Participation deduction.** The current tax credit mechanism for participation relief will be replaced by a participation deduction.
- **Tax losses.** Tax losses will be carried-forward for an unlimited period but can be set-off against profits only up to a maximum of 80% of the profits. A Swiss group parent company will be eligible to deduct losses of Swiss subsidiaries and foreign subsidiaries if their losses cannot be otherwise claimed.
- **Step-up in basis for companies relocating to Switzerland.** Foreign companies relocating to Switzerland are entitled to a step-up in basis up to the fair market value at the time of the relocation. The step-up basis will be written off within ten years using the straight-line method.

Apart from the licence box rule and the step-up in bases for holding, domicile and mixed companies, all favourable revised tax rules also apply for the federal corporate income tax.

Moreover, discussion is in progress to reduce the corporate income tax rates on the cantonal and communal level and to abolish the cantonal and communal equity taxes.

Securities issuance stamp tax

The removal of the securities issuance stamp tax is proposed.

VAT

The government plans to revise the VAT liability for foreign companies with a PE in Switzerland and foreign companies providing supplies within Swiss territory. The revision provides that the worldwide turnover and no longer the turnover generated in Switzerland should be decisive for the VAT liability. Moreover, as of 1 January 2015 the exemption from VAT liability for taxable supplies under the acquisition tax will be limited to services. The supply of goods and for instance the construction work foreign companies provide in Switzerland no longer qualify for the exemption. It is recommendable that foreign companies ascertain whether they become liable for Swiss VAT.

ONLINE RESOURCES

The Federal Authorities of the Swiss Confederation (*Eidgenössische Steuerverwaltung*)

W www.estv.admin.ch/bundessteuer/themen/00165/index.html?lang=de

Description. The federal tax authorities maintain the website. It is an official website, which is up-to-date. The website content is available in German, French and Italian but not in English. The VAT Act is also available in English at: www.admin.ch/ch/e/rs/c641_20.html.

Classified Compilation of Federal Legislation in English

W www.admin.ch/ch/e/rs/rs.html

W www.admin.ch/ch/e/rs/6.html

Description. English is not an official language of Switzerland. Nevertheless, the Official Publications Centre of the Swiss Federal Administration maintains a website with translations of several federal acts and ordinances. Section II.6 contains several translations that are of relevance for tax practitioners. The translations do not have any legal force.

Practical Law Contributor profiles



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Professional qualifications

- Master's Degree in Law (University of Zurich), 1994.
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Areas of practice

- Advising corporations and entrepreneurs on tax issues arising in connection with national and international restructurings, transactions and relocations.
- Advising high-net-worth individuals, family offices and trust companies on tax planning and tax compliance issues concerning trusts, voluntary disclosure, succession planning, lump sum taxation and relocation.
- Tax disputes.

Non-professional qualifications. Former tax commissioner of the department of services of the cantonal tax authority of Zurich, specialising on the assessment of corporations and entrepreneurs in the service industry, such as banks, insurance companies, law firms and the like (2006-2011).

Languages. German, English, Italian, French

Professional associations/memberships. International Fiscal Association (IFA).

Publications. 2011 Award granted by the Helbing Lichtenhahn Verlag for the best Master's thesis of the class of 2011: "The import and export of employee stock options. An assessment of the tax consequences for employees in key functions under the existing tax law and the taxation of employee participations under the new tax law."



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- Master's Degree in Law (University of Zurich), 1994.
- Admitted to the Swiss Bar, 1997.
- LL.M. in Taxation, USA (University of Florida), 2005.
- Admitted to practice as a solicitor of the Supreme Court of England and Wales, 2006.

Areas of practice

- Advising charitable foundations and high-net-worth individuals on tax and legal issues arising in connection with their charitable activities, particularly in a cross-border context.
- Advising corporations and entrepreneurs on national and international tax issues.
- Advising high-net-worth individuals, family offices, and trust companies on tax planning and tax compliance issues concerning trusts, voluntary disclosure, succession planning, lump sum taxation and relocation.

Languages. German, English, French

Professional associations/memberships

- Swiss Bar Association.
- Zurich Bar Association.
- Law Society of England and Wales.
- International Bar Association (IBA).
- Society of Trust and Estates Practitioners (STEP).
- International Fiscal Association (IFA).

Publications

- *German and Swiss inheritance law: a synopsis (in German), Basel, 2014.*
- *Trusts in Switzerland, in World Trust Survey, London, 2010.*
- *Jurisdictional Overview: Switzerland in Trusts in Prime Jurisdictions, Third Edition, London, 2010.*
- *Switzerland: estate planning with foreign family foundations - an assessment of the conflict of law and tax issues arising, Trust & Trustees, 2009.*
- *Are charitable trusts an alternative to Swiss charitable foundations?, Trust & Trustees, 2008.*
- *The Swiss Business Foundation - a suitable estate planning vehicle for entrepreneurs?, Trust & Trustees, 2007.*
- *The classification of private foundations for US federal income tax purposes, Trust & Trustees, 2007.*