



OVERVIEW OF THE SWISS TAX SYSTEM

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The Swiss tax system mirrors Switzerland's federal structure, which consists of 26 sovereign cantons with 2,397 independent municipalities. Based on the constitution, all cantons have full right of taxation except for those taxes that are exclusively reserved for the federal government. As a consequence, Switzerland has two levels of taxation: the federal and the cantonal/communal level.

The reform of the income tax system implemented in recent years provided for harmonization of the formal aspects of the various cantonal tax laws, for example, determination of taxable income, deductions, tax periods, and assessment procedures. The cantons and municipalities still have significant autonomy for the quantitative aspects of taxation, however, particularly with respect to determining the applicable tax rates. Consequently, the tax burden varies considerably between cantons/municipalities.

10.1 TAXATION OF CORPORATE TAXPAYERS

10.1.1 Corporate Income Tax – Federal Level

The Swiss federal government levies corporate income tax at a flat rate of 8.5% on profit after tax of corporations and cooperatives. For associations, foundations, and other legal entities as well as investment trusts, a flat rate of 4.25% applies. At the federal level, no capital tax is levied.

Taxable Persons

Taxable persons include Swiss resident legal entities, i.e., Swiss corporations, limited liability companies, and corporations with unlimited partners, cooperatives, foundations and investment trusts with direct ownership of immovable property. As partnerships are transparent for tax purposes, the partners are taxed individually. Companies which have their registered office or place of effective management in Switzerland are considered resident.

Taxable Income

Resident companies are subject to corporate income tax on their worldwide income with the exception of income attributable to foreign permanent establishments or foreign real estate (immovable property). Such income is excluded from the Swiss tax base and is only taken into account for rate progression purposes in cantons that still apply progressive tax rates.

Non-resident companies are subject to tax only on Swiss source income, i.e., income and capital gains derived from Swiss business, permanent establishments or immovable property, whereas income from immovable property includes income from trading in immovable property.

As a matter of principle, the statutory accounts of a Swiss company and – in the case of a foreign company – the branch accounts form the basis for determining taxable income. Apart from the participation exemption for dividend and capital gains income, various adjustments required by tax law and the use of existing loss carryforwards (the loss carryforward period is seven years), there are very few differences between statutory profit and taxable profit. The most common deductions allowed are depreciation, tax expense, interest expense, and management and service fees/royalties. The last two are deductible to the extent that they are in accordance with the arm's-length principle.

“Switzerland offers a modern tax system geared to the needs of business and the economy.”

Thin Capitalization Rules

The Swiss Federal Tax Administration has issued safe harbor rules for thin capitalization purposes that apply to related party debt. Third-party financing is not affected by these rules. Specifically speaking, a unique asset-based test is used to determine whether a company is adequately financed. The thin capitalization rules require that each asset class must be underpinned by a certain equity portion (generally expressed as a percent of the fair market value but often the lower book values suffice).

Related-party debt exceeding the allowable debt as calculated according to the percentages provided from the Tax Administration is reclassified as equity and added back to the taxable capital for purposes of the cantonal/communal annual capital tax, unless it can be proven that in this particular case the debt terms applied are more appropriate. Moreover, the allowable interest deductibility on debt can be determined by multiplying the allowable debt by the safe harbor interest rates. If interest payments to related parties exceed the amount which can be paid based on the allowable debt, they are added back to taxable profit. Furthermore, such interest is considered to be a hidden dividend distribution (subject to withholding tax of 35%).

Group Consolidation

Separate entity taxation applies in Switzerland for income tax purposes. It is not anticipated that group consolidation will be introduced anytime in the near future.

Group Reorganizations

Group reorganizations are governed by the Swiss merger law, which also comprises tax standards alongside the legal standards as a supplement to the applicable tax laws.

Provided certain prerequisites are met, reorganizations are possible on a tax-neutral basis, as long as the applicable tax accounting values of assets and liabilities remain unaltered and the assets remain in Switzerland.

10.1.2 Corporate Income Tax – Cantonal and Municipal Level

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

Special Tax Regimes

In contrast to the Swiss federal tax law, all cantonal tax laws provide special tax regimes, which may be obtained provided that the conditions of the tax harmonization law are met. Corporate Tax Reform III is expected to replace the special tax regimes set out below with new measures aimed at underpinning and increasing Switzerland's attractiveness as a location (see section 10.8).

A) Holding Company

The holding company tax status is available to Swiss companies (or permanent establishments of a foreign company) whose primary purpose according to the by-laws is to hold and manage long-term equity investments in affiliated companies. Furthermore, either the participations or participation income (dividends or capital gains) must represent at least two thirds of the company's total assets or income over the long term.

A holding company which meets one of these requirements is exempt from all cantonal/communal income taxes, with the exception of income from Swiss real estate. As a rule, the effective tax rate of a holding company is 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.

B) Mixed Trading Company

This has been given different names by the cantons, however in an international context, the tax status is most often referred to as the “mixed trading company” tax status.

A mixed company may be engaged in limited commercial business activity in Switzerland. As a general rule, at least 80% of the income from commercial activities must derive 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.

If a company meets the above criteria, it may apply for tax treatment in accordance with the following rules:

- Qualifying income from participations (including dividends, capital gains, and revaluation gains) is exempt for cantonal and communal tax purposes.
- Other income from Swiss sources is taxed at the normal rate.
- A portion of foreign source income is subject to cantonal/municipal income taxes depending on the degree of business activity carried out in Switzerland.
- Expenditure that is justified for business purposes and is related economically to certain income and revenues is deductible. In particular, losses from participations can only be offset against taxable income from participations (i.e., income that is not obtained tax-free).
- Reduced capital tax rates are applicable.

10.1.3 Capital Tax

Annual capital tax is only levied at cantonal/communal 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, retained earnings). The taxable base of companies also includes any provisions disallowed as deductions for tax purposes, any other undisclosed reserves, as well as debt that economically has the character of equity under the Swiss thin capitalization rules. Some cantons even provide for crediting the cantonal corporate income tax against capital tax.

The tax rates vary from canton to canton and depend on the tax status of the company. In 2014, this ranges from 0.0010% to 0.5250% for companies subject to ordinary taxation, and from 0.0010% to 0.4010% for companies eligible for a special tax regime.

10.1.4 Tax Relief

Tax relief can be granted at cantonal and communal level and in explicitly defined regions at federal level for qualified new investments for up to 10 years.

Federal Level

The federal government has defined less centralized and/or economically weaker regions which are entitled to grant business incentives including partial or full corporate income tax breaks for up to 10 years (see section 14.2.2).

Tax breaks are available for investment projects that fulfill certain conditions, for example, creation of new production-related jobs, non-competition with existing businesses, etc.

Cantonal and Municipal Level

Most cantons offer partial or full tax breaks for cantonal/communal tax purposes for up to 10 years on a case-by-case basis. In particular, incentives may be obtained for creating a new presence or for an expansion project with particular economic relevance for the canton. Most importantly, however, business incentives are generally granted in connection with the creation of new jobs locally, i.e. requirement of at least 10 to 20 jobs in most cantons.

10.2 TAX RATE IN AN INTERNATIONAL COMPARISON

The international comparison of the total tax rate (TTR) shows that Switzerland has a tax system which is consistently extremely competitive compared with other highly developed industrial countries. The total tax rate (TTR) measures the amount of all taxes and mandatory contributions borne by businesses and is expressed as a percentage of commercial profits. The 2013 and 2014 annual reports reflect the TTR for the fiscal years 2011 and 2012 (1 January to 31 December, 2011 and 2012). The total amount of taxes borne is the sum of all the different taxes and contributions payable after accounting for deductions and exemptions.

The taxes and contributions included can be divided into the following categories:

- Profit or corporate income taxes
- Social contributions and payroll taxes paid by the employer (for which all mandatory contributions are included, even if paid to a private entity such as a pension fund)
- Wealth tax
- Sales taxes (and cascading sales taxes as well as other consumption taxes such as irrecoverable VAT)
- Other taxes (such as municipal duties and vehicle and fuel taxes)

It should further be noted that the Swiss tax system is not only attractive for corporate taxpayers but also for individual taxpayers as it provides for a modest tax burden in international comparison as well.

www.s-ge.com/taxtool

Tax comparison of international locations (in cooperation with BAK Basel)
Available in English

Total Tax Rate, 2011/2012

(FIG. 48)



Source: Price Waterhouse Coopers, 2014

10.3 TAXATION OF INDIVIDUAL TAXPAYERS

10.3.1 Personal Income Tax

Taxable Persons

Individuals are subject to taxation at federal and cantonal/ municipal level if they have their permanent or temporary residence in Switzerland. Temporary residence is given provided the individual, regardless of any temporary interruptions, stays in Switzerland for a) at least 30 days carrying out a professional activity or b) for 90 days or more without pursuing any professional activity. According to the Swiss tax system, partnerships are transparent; hence each partner is taxed individually.

The income of married couples is aggregated and taxed according to the principle of family taxation. The same applies to any registered civil partnerships. Any income of a minor child is added to the income of the adults, with the exception of the child's earned income derived from gainful employment, which is assessed separately.

The federal as well as cantonal/communal income taxes are levied and collected by the cantonal tax authorities and are assessed for a period of one year (calendar year) on the basis of a tax return to be filed by the taxpayer.

Individuals who do not set up a place of residency in Switzerland are only obliged to pay tax on their income in Switzerland.

Taxable Income

Resident individuals are subject to tax on their worldwide income. However, revenues derived from business conducted abroad, from permanent establishments, and from immovable property situated abroad are exempt and are taken into account only for the determination of the applicable tax rate (exemption with progression). The total income includes income derived through gainful activities, both as an employee and self-employed, income from compensatory or subsidiary payments, and income from movable and immovable property. Taxable income also includes the notional rent value of property that the resident lives in.

Certain types of income such as inheritance, gifts, matrimonial property rights, subsidies paid from private or public sources, etc. are by law excluded from taxation. Moreover, the individual may deduct earning costs from gross income including, for example, travel costs between home and their place of work, social security contributions, and contributions to approved savings plans. Additional deductions may be claimed for dependent children and insurance premiums as well as for married and double income couples. However, the extent of deductions allowed may vary greatly from canton to canton. In addition, interest payments on loans, mortgages, etc. for business purposes are fully deductible. The deductibility of interest for private purposes related to private assets is, however, limited to an aggregate income from movable and immovable assets plus CHF 50,000. Furthermore, value-preserving property expenses can be deducted, or an all-inclusive deduction can be applied instead.

Individual tax rates are typically progressive, whereas a maximum tax rate of 11.5% applies at the federal level. The cantons may set their own tax rates. The maximum applicable cantonal tax rate varies significantly from canton to canton (around 12% to 30% in cantonal capitals). A special family rate was introduced for the 2011 fiscal year at the federal level. This is based on the rate for married couples, but provides for an additional tax deduction per child.

Capital Gains

Depending on whether a capital gain is realized on personal or business property or on movable or immovable property, such gain is taxed differently. Gains on movable personal property are exempt from taxation whereas gains realized on movable business property are attributed to ordinary income. For taxation of immovable property, please see section 10.3.2.

Losses

Contrary to personal losses, business losses are tax deductible and may be carried forward for seven years.

Distribution of Capital Contributions

Since January 1, 2011, the distribution of qualified capital contributions is tax free. They are subject to neither withholding tax (chapter 10.4) nor income tax on the part of the receiving individual. While this already applied to the repayment of share capital prior to January 1, 2011, it now also applies to repayments on investments, premiums, and assignments of joint stock companies made after December 31, 1996, as tax-free distributions.

Tax at Source

Foreign employees who do not possess a residence permit are taxed for their earned income by a tax deduction at source. If the source-taxed income exceeds CHF 120,000 (CHF 500,000 in Geneva) per annum, a tax declaration has to be submitted. In other cases, the tax at source is definitive. The employee can, however, assert a special deduction in a separate process.

Employees who have retained their residence abroad are taxed on their earned income at the source, regardless of their nationality, and in general cannot submit a tax declaration.

The legislation governing tax at source is in the process of being revised. There are plans for a reduction in the income threshold for a tax declaration. The issues being looked at primarily involve questions of procedure, in particular as regards persons who have no residence in Switzerland but have almost exclusively income from Swiss sources.

10.3.2 Wealth Tax

Net wealth tax is only levied at cantonal/communal level in accordance with the respective cantonal tax laws and rates. The tax is based on the balance of the gross assets including but not limited to immovable property, movable assets such as securities and bank deposits, cash redemption value of life insurance, cars, shares of non-distributed inheritances, etc. Taxes are also levied on assets not yielding any income. Shareholdings in foreign businesses and plants are not subject to wealth tax, nor are properties abroad. These assets are, however, taken into account for the calculation of the applicable wealth tax rate, if it is a progressive rate (tax exemption with progression). Individuals can deduct debts from the gross assets, as well as tax exemptions, which vary from canton to canton and according to marital status and whether the person in question has children.

The wealth tax is progressive in most cantons, whereby the cantons can set their own tax rates. The tax burden therefore varies considerably and ranges from 0.0010% to 1%. The federal government does not charge wealth tax.

10.3.3 Expatriates

Qualifying expatriates are foreign managers and certain specialists (e.g. IT specialists) seconded to Switzerland on a temporary basis for a period of up to five years, i.e. the (assignment) contract has to be limited in time for a maximum of five years. Expatriates may claim tax relief on expenses incurred due to their stay in Switzerland.

The following expenses incurred by expatriates are deductible: i) Relocation costs including travel costs to and from Switzerland, ii) reasonable accommodation costs in Switzerland if the residence abroad is still maintained, iii) costs for children of school-going age attending a private school if local state-funded schools cannot offer adequate educational provisions. Instead of identifying the actual costs for relocation and accommodation, the taxpayer may claim a monthly lump-sum deduction which may vary from canton to canton. Any reimbursement from the employer of work-related costs incurred by the expatriate must be declared in the employee's payslip.

The entitlement to benefit from expatriate status for tax purposes ceases once temporary employment is replaced or superseded by a permanent position.

The federal government is currently reviewing its Expatriates Ordinance. The proposed changes envisage a restriction with regard to the group of entitled persons and more stringent requirements for the application of deductions.

10.3.4 Cross-Border Commuters

Cross-border commuters are those people who live abroad (e.g. Germany, France, Italy, Liechtenstein, and Austria) and work in Switzerland and who commute from home to work and back each day.

The Swiss taxation of such individuals differs, depending on their place of work and domicile (home country/country of residence). The double tax treaty with Germany, for example, provides for an apportionment of the taxation right between the two countries. The country of work is limited to a flat-rate withholding tax of 4.5% of the gross salary of the cross-border commuter. Such partial taxation of cross-border commuters in the country of work does not relieve the commuter from taxation of the earned income at the place of residence (e.g. taxation with credit). The cross-border commuter status is abandoned if the employee cannot return to his/her domicile abroad on more than 60 working days per year for business reasons. Cantonal agreements vary for cross-border commuters from France.

10.3.5 Lump-Sum Taxation

Both federal and most cantonal tax regulations provide for the possibility to make use of a special tax arrangement often referred to as lump-sum taxation. Under this, qualifying taxpayers resident in Switzerland are taxed on the basis of expenditure and living costs in Switzerland instead of on the more customary basis of total income and total assets.

Qualifying taxpayers who may apply for lump-sum taxation are individuals who take up temporary or permanent residence in Switzerland for the first time or after an absence of at least ten years and who do not carry out any gainful occupation in Switzerland. While Swiss nationals may only apply for this arrangement in the tax period of taking up residency, foreigners are allowed to apply for an indefinite period, provided that the conditions are fulfilled. The lump-sum taxation provisions are tailored to financially independent persons who are not seeking to work in Switzerland.

In case of spouses moving to Switzerland, the requirements for benefiting from lump-sum taxation must be satisfied by both spouses. As a rule, it is not possible for one spouse to be taxed on a lump-sum basis while the other spouse is taxed on an ordinary basis.

The basis of taxation is calculated annually based on expenses incurred by the taxpayer in Switzerland and abroad. The calculation not only considers the expenses of the taxpayer but also those of the spouse and dependent children as long as they live in Switzerland. Expenses usually taken into account are food, clothing and accommodation, education, leisure activities, and all other expenses linked with the standard of living. The exact calculation is determined together with the relevant tax authorities of the canton in which the person wishes to become a resident. In any case, the minimum base must correspond either with a) at least five times (with direct federal tax from January 1, 2016, seven times) the rent paid on rental property or the imputed income attributable to homeowners or b) two times (with direct federal tax from January 1, 2016, three times) the annual costs of lodging if the taxpayer lives in a hotel or similar accommodation. In the event that the taxpayer owns or rents more than one property, the most expensive will be taken into account. A minimum taxable income of CHF 400,000 will apply for direct federal tax from January 1, 2016.

Generally, individuals who apply for lump-sum taxation are considered Swiss residents and may also apply for treaty relief on their foreign-source income. Some treaties, however, allow for treaty benefits only if all income from the source country is subject to ordinary taxation in Switzerland.

In 2009, a referendum in the canton of Zurich called for the abolition of lump-sum taxation at the cantonal/communal level. Since the population of the canton of Zurich accepted the draft, the special tax arrangement has no longer been available in Zurich since January 1, 2010. Since then, the cantons of Schaffhausen, Appenzell Ausserrhoden, Basel-Land and Basel-Stadt have also eliminated lump-sum taxation. Other cantons may follow.

In addition, before the end of 2014, voting will take place on a popular initiative aimed at the national abolition of lump-sum taxation.

10.3.6 Inheritance and Gift Tax

Inheritance and gift taxes are not harmonized. Consequently, the cantons are free to levy such tax and the various cantonal laws differ considerably in almost every respect. With the exception of the canton of Schwyz, all cantons levy inheritance and/or gift taxes for certain asset transfers if the deceased or donor had been resident of the respective canton or if real estate located in the canton is transferred.

Inheritance and gift tax rates are mostly progressive and are usually based on the degree of relationship between the deceased or donor and the beneficiary and/or the amount received by the beneficiary. In all cantons, spouses are exempt from inheritance and gift taxes; most cantons also exempt direct descendants.

At the moment a popular initiative is pending which provides for the introduction of an inheritance/gift tax at the federal level, instead of the cantonal inheritance and gift taxes. Asset transfers between married couples and registered partners should continue to remain tax-free. For all other asset transfers a tax rate of 20% is foreseen, whereby a tax exempt amount of CHF 2 million and various exceptions are planned. If this legislation is implemented, it is expected to be implemented in 2015 at the earliest, although 2016 is perhaps more likely. If the popular initiative is accepted, however, gifts given/received after January 1, 2012, will be assigned to the taxable estate retrospectively, regardless of when the new article of the constitution enters into effect.

10.4 WITHHOLDING TAX

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

Since the capital contribution principle came into effect on January 1, 2011, repayments of capital contributions made by the shareholder after December 31, 1996, and declared and accounted for correctly are now treated the same as repayments of nominal capital. With regard to withholding tax, these repayments are in general tax-free. The repayment of capital contributions for individuals (if shares are held as private assets) now no longer represents taxable income (see section 10.3.1).

Lottery winnings are also subject to withholding tax (money won in excess of CHF 1,000, valid from 2013), as are insurance benefits.

Generally, the debtor is liable for the tax and is required to withhold the amount due, irrespective of whether the recipient is entitled to a full or partial refund. A refund is only possible provided that the respective earnings are properly declared for the purposes of income taxation. The aim is to prevent tax evasion. For Swiss resident corporate taxpayers, withholding tax is reimbursed by way of a refund, whereas for individuals the tax is credited against total tax liability through the regular taxation procedure.

For non-resident taxpayers, the withholding tax generally represents a final tax burden. However, a partial or total refund may be granted based on an international double tax treaty or a bilateral agreement concluded by Switzerland with the country in which the recipient of the earnings is residing.

It should further be noted that a reporting procedure may be applied for certain qualifying dividend distributions, replacing the withholding and refund procedure.

“Thanks to a number of double tax treaties and bilateral agreements, taxpayers resident outside of Switzerland can be reimbursed for all or part of their withholding tax.”

10.4.1 Domestic Rates

The tax rate applied on dividend distributions including deemed profit distributions and interest payments relating to bonds and bond-like debt instruments as well as on interest payments made by banks or bank-like institutions to non-banks is 35%. There is no withholding tax on interest payments relating to qualifying ordinary company loan agreements. Provided that royalties, licenses, service and similar fees payable by Swiss individuals or corporations are at arm's length, no withholding tax is levied.

10.4.2 Treaty Rates

Most treaties provide for a reduction of the normal 35% rate on dividends. The reduced rate is usually 15% for portfolio investors and 0%, 5%, or 10% for substantial corporate owners. Some treaties require the taxation of Swiss-source income in the recipient's country of residence. Otherwise no relief will be granted. With regard to interest income, most treaties allow for a reduction as well, typically up to 10%. In some treaties a full refund is granted.

However, a reduction is only possible if the person applying for treaty benefits is actually entitled to claim the treaty.

10.4.3 Bilateral Agreements with the EU

In May 2004, Switzerland and the European Union (EU) concluded eight bilateral agreements (“Bilateral Agreements II”) in addition to the seven existing bilateral agreements (“Bilateral Agreements I,” in force since June 1, 2002).

One of the agreements is the Savings Tax Agreement providing for measures equivalent to those laid down in the EU Savings Tax Directive. To entice Switzerland to enter into the Savings Tax Agreement, the same agreement also incorporated language which was practically identical to the version of the EU Parent/Subsidiary Directive and the EU Interest/Royalty Directive in effect at that time. Switzerland has therefore had de facto access to the respective EU directives since July 1, 2005, whereas future changes to the EU directives will not automatically apply to Switzerland.

Accordingly, dividend, royalty, and interest payments between Switzerland and the member states of the EU will not be subject to withholding tax, provided various conditions such as minimum shareholding and holding period are fulfilled.

In general, the bilateral agreements, including the Savings Tax Agreement, will also apply to new EU member states joining the EU after July 1, 2005 (e.g. Bulgaria, Romania). However, with some countries transitional arrangements must be considered.

The application of the above-mentioned benefits from the Savings Tax Agreement can be denied in cases of abuse or fraud. This is because of the explicit reservation made in the Savings Tax Agreement as to the use of domestic or agreement-based provisions for the prevention of fraud or abuse, both by Switzerland by the individual EU member states.

Double tax treaties between Switzerland and EU member states with more favorable tax treatment of dividend, interest, and royalty payments remain unaffected.

10.5 VALUE ADDED TAX

Although Switzerland is not an EU member state, its value added tax (VAT) system was structured in accordance with the sixth EU VAT Directive (“Sixth Council Directive on the harmonization of the laws of the Member States relating to turnover taxes” whereby turnover refers to revenue) as a non-cumulative, multi-stage tax that provides for deduction of input tax. As a result, Swiss VAT is levied as an indirect tax on most goods and services at the federal level only and applies to each stage of the production and distribution chain. It is designed as a tax owed by the supplier of goods or services (i.e., the tax liability is based on the payment by the recipient of the goods or services).

10.5.1 Taxable Persons

Any legal entity, establishment, partnership or association without legal capacity, institution, etc. that operates an enterprise (obtains revenues through business or professional activity for a long period of time, regardless of whether there is an intention to make money) is liable for tax. There is a registration obligation if the taxable revenue in Switzerland exceeds CHF 100,000 per year. All permanent domestic establishments of a Swiss parent company form one taxable entity together with the parent company. All domestic establishments of a foreign parent company are also classed as a taxable entity. On the other hand, the domestic establishments and the foreign parent company are each considered a separate taxable entity.

If the revenues of a taxpayer (revenue from taxable supplies of goods and services) are less than CHF 100,000 per year (or less than CHF 150,000 for sports clubs and non-profit institutions), then the entity is exempt from tax liability. However, any such entity may also waive exemption from tax liability. Upon registration with the Federal Tax Administration, the taxpayer receives a VAT number based on the company identification number. The VAT number is added to the company identification number (e.g. CHE-123.456.789 VAT). Since January 31, 2014, the only valid number has been the VAT number based on the company identification number, which has replaced the former six-digit reference number.

A special regulation exists for holding companies. In general the acquisition, holding, and selling of shareholdings is a commercial activity within the meaning Swiss VAT legislation. Shares of capital in companies of over 10% are classed as shareholdings which are held with the intention of long-term investment and have a considerable influence. The qualification of the holding activity as a commercial activity means that the holding company can be voluntarily registered due to the waiving of the exemption from tax. The advantage of the registration is that pre-tax which is due within the scope of the holding activities can be claimed, although the sale of shareholdings essentially represents income exempt from tax (normally, however, a pre-tax correction is necessary due to interest income).

10.5.2 Taxable Supplies

VAT is levied on the following types of services: 1) delivery of goods in Switzerland (including Liechtenstein); 2) purchases of services in Switzerland (including Liechtenstein), 3) purchase of services (and certain goods deliveries in Switzerland) from enterprises with their registered office in another country if the value of goods or services exceeds CHF 10,000 per year; and 4) import of goods.

Certain services provided to foreign recipients (as well as the export of goods and the delivery of goods abroad) are not taxed or are zero-rated with full input tax recovery. The delivery of goods for the purposes of VAT is not limited to goods deliveries as defined by Swiss commercial law. The VAT law provides for a number of business transactions (such as the maintenance of machinery, rental or lease of goods, trade in electricity, etc.) that are deemed to be supplies of goods for VAT purposes.

10.5.3 Taxable Amount

The basis for the calculation of the taxable amount for the supply of goods and services is the agreed upon or the collected gross remuneration (in cash or in kind). Input tax, i.e., the tax paid on purchases of goods and services, can be deducted. Consequently, only the value added is taxed (net all-phase principle).

10.5.4 Tax Rates

Since January 1, 2011, the standard rate has been 8% on all taxable supplies of goods or services. A reduced rate of 3.8% is applicable for accommodation. A reduced rate of 2.5% applies on certain categories of goods and services for certain basic needs such as water supply, food and non-alcoholic beverages, cattle, poultry, fish, cereals and grain, books and newspapers, services of non-commercial radio and TV broadcasts, etc.

The Federal Tax Administration offers further simplified VAT accounting for small businesses with revenue of below CHF 5.02 million (incl. VAT) and a tax liability of CHF 109,000 (calculated according to the applicable net tax rate) or less per year. These small businesses may opt to submit VAT based on a balanced tax rate which is lower than the standard rate of 8% if they, in return, waive the standard procedure for input VAT accounting, which would otherwise be deducted from the VAT levied on revenue (input VAT deduction). This simplified taxation method must be maintained for at least one year, and VAT returns need to be filed twice a year only (in contrast to the normal quarterly calculations).

10.5.5 Exemptions

The law differentiates between VAT-exempt and VAT-excluded revenue from VAT. No VAT is levied in either case, but a distinction is made regarding the input VAT deduction.

In cases of exclusions, there is no input tax deduction possible for the taxes paid in generating the revenue excluded from VAT. Excluded activities are the healthcare sector, education, culture, sport, social care, most banking and insurance activities, rental and sale of real estate, as well as gambling and lotteries. For most of these categories, however, the taxpayer may opt for taxation voluntarily, except in the case of banking and insurance revenue, as well as the renting of real estate exclusively for residential use. In contrast to activities excluded from VAT, exempt activities allow for an input VAT deduction for all taxes paid in generating the revenue in question (true exemption). An example of an activity exempt from tax is the export of goods (see also section 10.5.7).

Business activities abroad are not subject to Swiss VAT. These types of revenue are generally the result of international business models. A typical example is a Swiss trading company that buys products from a foreign manufacturing company and sells them to customers in a third country, shipping the products directly to those customers. Activities involving the supply of goods or services abroad only entitle the taxpayer to deduct input tax if the revenue does not qualify as VAT exempt.

10.5.6 Deduction of Input Taxes

An enterprise registered for VAT is liable for VAT on all supplies (sales 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, and so do not generally represent an additional burden for a business. VAT is a genuine expense only for the end-consumer or for a business involved in transactions for which no input tax can be recovered (businesses with excluded income such as banks and insurance companies).

10.5.7 Exports

In addition to exported goods, certain services – if rendered to a recipient domiciled abroad – are also exempt from Swiss VAT (with credit).

However, the Swiss VAT law includes a list of services that are either taxable where the service provider is domiciled or are subject to special provisions according to the list (e.g., services in connection with real estate, hotel and restaurant services; services in relation to culture, sports and the arts, passenger transport, etc.). Services not included in this list that are provided to a foreign recipient are not subject to Swiss VAT (a catch-all provision – the “place of supply is where the recipient is established” – is applied).

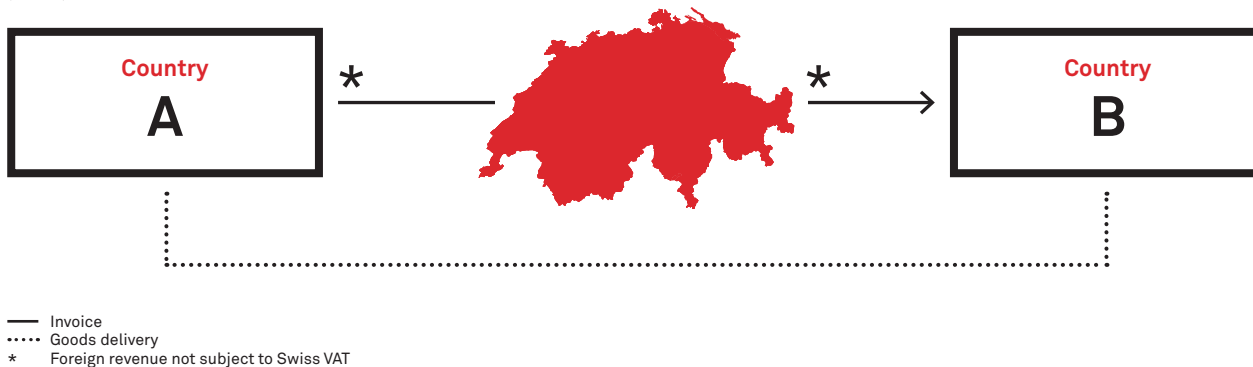
However, the VAT exempt nature of such services has to be proven by the underlying documents such as invoices, agreements, etc. Under all circumstances, it is very important that the documentation be issued in compliance with the requirements according to Swiss VAT law. The same applies to export shipments, where a customs export/import certificate is required for tax exemption.

10.5.8 International Business Activity

The basic VAT rules described above have the following effect in the case of a Swiss trading company that buys products from a foreign manufacturing company and sells them to customers in a third country, shipping the products directly to those customers:

International Business Activity

(FIG. 49)



Source: Compiled by the author

10.5.9 Non-Resident Enterprises

Foreign businesses supplying goods or certain services to or within Switzerland wishing to waive the exemption from tax liability or with corresponding sales revenues in excess of the threshold stated in section 10.5.1 are generally required to appoint an authorized VAT representative based in Switzerland. Such entrepreneurs may claim input VAT directly. Foreign companies which exclusively provide services subject to tax to taxable persons are exempt from the VAT obligation; these are supplies in Switzerland, provided these supplies are not subject to import tax, and services based on the principle “the place of supply is where the recipient is established” (exception: telecommunication and electronic services to non-taxable recipients).

Non-resident entrepreneurs without taxable activities in Switzerland are entitled to a refund of Swiss VAT if their foreign activities would qualify as taxable revenue under Swiss VAT law and if the country of residence grants reciprocal treatment to Swiss entrepreneurs (VAT refund).

“At 8%, Switzerland has the lowest rate of VAT in Europe.”

10.6 OTHER TAXES

10.6.1 Stamp Taxes

Generally, the tax liability arises on special legal transactions such as the issuance of shares (issuance stamp tax also known as capital duty) or the trading of securities (securities transfer stamp tax).

The tax on the issuance and the increase of equity of Swiss corporations is 1% on the fair market value of the amount contributed, with an exemption on the first CHF 1 million of capital paid in, whether it is made in an initial or subsequent contribution.

The transfer of Swiss and foreign securities in which a Swiss securities dealer participates as a contracting party or as an intermediary is subject to Swiss securities transfer stamp tax (often called “securities turnover tax” whereby turnover refers to revenue). Depending on the issuer’s residence (Switzerland or foreign country), the tax rate is 0.15% or 0.3% and is calculated on the consideration of the securities traded.

Swiss securities dealers are defined as any persons professionally engaged in buying or selling securities for their own account or for another person, including Swiss banks and other Swiss bank-like institutions. Furthermore, companies holding taxable securities whose book values exceed CHF 10 million and remote members of a Swiss stock exchange with regard to Swiss titles which are quoted on the Swiss stock exchange are considered Swiss securities dealers.

10.6.2 Real Estate Taxes

Capital gains on Swiss immovable property are either subject to a special cantonal real estate gains tax or to ordinary corporate income tax depending on the system that is applied in the canton where the immovable property is located. The right to tax such gains is reserved to the cantons and communes.

Furthermore, in most cantons the transfer of real estate is subject to a conveyance tax, whereas on the federal level no taxes of such kind are levied. As a general rule, conveyance tax is assessed on the purchase price or the taxable value of the real estate and is typically paid by the purchaser of the real estate. Depending on the canton, the applicable tax rate varies between 1% and 3%.

Moreover, about half of the cantons levy a special wealth tax on real estate. This tax is due every year in addition to the general wealth tax. The tax is levied at the place where the property is situated and is assessed on the market or taxable value of the real estate without allowing for deduction of debts. The tax rates applied range between 0.035% and 0.3%.

10.7 DOUBLE TAX TREATIES

To minimize the effect of double taxation in Switzerland and abroad, Switzerland has concluded tax treaties covering direct income taxes with all major industrial countries and many other countries. Most of these treaties are patterned on the principles of the OECD model convention, which defines where the income or the assets are to be taxed and also describes the method for the elimination of double taxation. Switzerland adopted the tax exemption method, exempting income allocable to a foreign country from taxation in Switzerland. The respective income and assets are only considered for the calculation of the applicable tax rate (progression). On certain income streams (dividend, interest, and license fees) both states, the state in which the income is earned and the state of the recipient's residence, are entitled to tax them. However, the double tax treaty limits the right of taxation of the source state, and the source tax can be credited against the tax levied in the recipient's state of residence. To date, more than 80 tax treaties are in effect, plus also the EU bilateral agreements as of July 1, 2005. As Swiss tax treaties are treated as international conventions, they generally supersede federal as well as cantonal/municipal tax rules.

Swiss double tax treaties apply to persons (individuals or companies) who are resident in one or both of the contracting states. As already mentioned in section 10.3.5, Swiss residents applying for lump-sum taxation generally qualify for treaty relief as well. However, some treaties provide for special conditions to be met in order to benefit from the treaty applied.

Apart from the tax treaties covering direct income taxes, Switzerland also concluded a few tax treaties in the area of inheritance and estate tax. Switzerland has not negotiated any double tax treaties concerning gift taxes so far. Furthermore, there are some special treaties relating to cross-border commuters, taxation of international air and transport services, and the tax situation of international organizations and their staff.

10.8 CORPORATE TAX REFORM III

Switzerland is currently in the process of modernizing its corporate tax system. The aim of Corporate Tax Reform III (CTR III) is to put in place an attractive system of corporate taxation that is in line with the EU and OECD's internationally accepted tax rules.

Accordingly, the cantonal tax regimes for holding, management, and mixed companies and the federal principal allocation and Swiss finance branch regimes are to be replaced with various measures, including license boxes for intellectual property and taxation of surplus equity exceeding a core capital.

CTR III is intended to increase the tax appeal of Switzerland as a location on a lasting basis.

The first consultation draft is planned for fall 2014. The corresponding new provisions are not expected to enter into effect before 2018.

10.9 TRANSFER PRICING RULES

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 introduce such 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.

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