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Swiss Withholding Tax and Securities Transfer Tax Reform

The Swiss Parliament decided on December 17, 2021 to adopt a withholding tax and stamp duties reform to strengthen the Swiss debt capital market, equities are excluded. Should the voters approve the proposal, the withholding tax on interest payments in relation to newly issued bonds as well as the transfer stamp duty on domestic bonds would be abolished. The tax on equity remains. Furthermore, trades in domestic bonds and certain sales transactions in qualifying participations will be exempt from the Securities Transfer Stamp Tax.

1. What are the fundamental changes?

The aim of the present reform is to facilitate the withholding tax-free issuance of domestic bonds and therefore become internally competitive in the debt market. Previous reform proposals focused on establishing a paying agent tax, which is no longer on the agenda. A notable change is the abolition of withholding tax on interest on domestic bonds. Therefore, it will no longer be necessary for domestic groups to issue bonds through foreign subsidiaries. However, the Swiss Federal tax administration will now reclassify such foreign bonds into domestic bonds if the resulting proceeds used in Switzerland exceed certain thresholds.

Because the Swiss Parliament introduced a transitional provision, the withholding tax will only be abolished on new *bond issues. Bonds that are already subject to withholding tax at the time of entry into force of the new rules will remain subject to withholding tax. This, however, only applies to bonds that were formally issued by a domestic issuer and are subject to withholding tax. Already issued foreign bonds can therefore be migrated to Switzerland without any withholding tax consequences in Switzerland.*

2. Withholding taxes on Swiss Investment Funds

The lawmakers have reworked the legislation to eliminate discrimination against domestic collective capital investments schemes compared to foreign collective capital investment schemes. Income from domestic collective investment schemes will still be subject to withholding tax. However, income from bonds from collective investment schemes that is reported separately may be distributed by collective investment schemes free of withholding tax.

3. Changes to the Securities Transfer Stamp Tax

The 0.15% securities transfer stamp tax on domestic bonds on secondary market transactions will be abolished. Already exempt from the securities transfer stamp tax are primary market transactions involving domestic bonds as well as the return of securities for redemption.

Currently, the purchase and sale of participations in domestic or foreign corporations is subject to a securities' transfer stamp tax of 0.15% or, if a domestic securities dealer acts as a party or an intermediary, 0.3%. The currently introduced amendment exempts the brokerage as well as the purchase or sale of participations of at least 10% of the share capital or nominal capital of other companies by a securities dealer within the meaning of the Federal Stamp Tax Act from securities transfer stamp tax, if the participation qualifies as a long-term asset The exemption, however, does not extend to acquisitions and disposals of investments held in the short term, considered current assets.

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Furthermore, the issuance of units of foreign money market funds, which limit their investment in securities that have a remaining term to maturity of no more than 397 days, will now be exempt from the securities transfer stamp tax.

4. Timeline & Referendum

Because a referendum came about successfully, there will be a public vote which will likely take place in autumn 2022. Should the voters approve the proposal, it is expected that the abolition of the Swiss withholding tax on bonds comes into force on January 1, 2023. The Federal Council will decide on the enactment of the remaining changes to the Federal Withholding Tax Act as well as to the Federal Stamp Duty.

5. What you need to do

a) Because adverse withholding tax consequences can be fended off for all different types of financing and refinancing activities in Switzerland, e.g., raising capital via bond issuances, asset backed security structures, crowdfunding platforms and other capital market transactions, these activities will be implemented.

b) Based on a strictly formal approach as to what constitutes a new bond issue and an old bond issue with regard to the transitional provision, it should be feasible to replace a current foreign issue with a domestic issue.

c) A repatriation of a foreign bond issue that goes along with a change of the issuer or a relocation of the registered office of a foreign financial company to Switzerland does not imply that the bonds issued by that company prior to January 1, 2023, will be subject to withholding tax.

Please contact us for more information, we are happy to advise.

Dr. iur. Alexander Lindemann +41 44 570 73 51 alexander.lindemann@lindemannlaw.ch
Dr. oec. publ. Jakob Schaad +41 44 570 73 56 jakob.schaad@lindemannlaw.ch
Dr. Ariel Sergio Davidoff, LL.M. +41 79 922 22 57 arielsergio.davidoff@lindemannlaw.ch
Maria Shaftan, MBA +41 44 570 73 50 maria.shaftan@lindemannlaw.ch
Seefeldstrasse 33 (next to the Opera) 8008 Zürich www.lindemannlaw.ch