# The Inward Investment and International Taxation Review

Fifth Edition

Editor
Tim Sanders

Law Business Research

# The Inward Investment and International Taxation Review

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Fifth Edition

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Tim Sanders

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# EDITOR'S PREFACE

Cross-border corporate structures and transactions are under ever closer scrutiny. While a global economy requires the free movement of capital, goods and services and legitimate cross-border financing and business acquisitions, governments are increasingly concerned by the potential this activity creates for artificial erosion of their tax base and are taking action to protect it. In response to this trend, the current edition has a chapter dedicated to 'BEPS': the OECD Action Plan on Base Erosion and Profit Sharing.

Recent, tangible examples of governments acting to protect their tax base include Notice 2014-52 issued by the US Treasury on 22 September, in response to US corporates relocating their headquarters to non-US jurisdictions. The Notice describes regulations that the US government intends to issue to curtail tax benefits of US corporate inversions where the transaction closes on or after the issue date of the Notice, with no grandfathering for signed but yet to be completed transactions. The Notice also indicated that the US Treasury is reviewing its tax treaty policy and the extent to which it is appropriate for inverted groups to obtain treaty benefits. A further example is the UK government's plan to publish a consultation document on new measures to prevent multinational companies exploiting differences between countries' tax rules through the use of 'hybrid mismatch' arrangements, the focus of action 2 of the OECD's BEPS action plan on international corporate tax avoidance. In the UK Autumn Statement draft legislation was put forward to introduce a new UK tax called diverted profit tax at 25 per cent on profits deemed to have been diverted from the UK (1) through entities, including UK corporate taxpayers, or by means of transactions that deliver effective tax mismatch outcomes without sufficient underlying economic substance or (2) as a result of planning designed to avoid trading in the UK through a UK permanent establishment. These are not isolated examples.

The concern is that legitimate cross-border commercial activity will become caught up in attempts to curtail what governments regard to be artificial and unacceptable activity. At the extremes the distinction between what is genuine commercial activity and artificial manipulation is clear but there is a middle ground where legitimate commercial transactions and activity also generate tax benefits and how this area will be caught up

in the drive to tackle perceived cross-border abuse is an area to watch. Whatever the obstacles, companies will continue to trade in the global economy, across borders and as governments increasingly target such activity there will be a pressing need for the adviser to consider the potential impact these initiatives could have on their clients' tax affairs.

The aim of this book is to provide a starting point for readers, and to assist businesses and advisers, each chapter providing topical and current insights from leading experts on the tax issues and opportunities in their respective jurisdictions with a chapter on the overarching potential impact of BEPS. While specific tax advice is always essential, it is also necessary to have a broad understanding of the nature of the potential issues and advantages that lie ahead; this book provides a guide to these.

I should like to thank the contributors to this book for their time and efforts, and above all for their expertise. I would also like to thank the publisher and the team for their support and patience. I hope that you find the work useful, and any comments or suggestions for improvement that can be incorporated into any future editions will be gratefully received.

The views expressed in this book are those of the authors and not of their firms, the editor or the publishers. Every endeavour has been made to ensure that what you read is the latest intelligence.

**Tim Sanders**
Skadden, Arps, Slate, Meagher & Flom LLP
London
January 2015

## Chapter 38

# SWITZERLAND

*Michael A Barrot*[1]

## I INTRODUCTION

Consisting of 26 cantons (states), Switzerland is a federal parliamentary republic organised on three political levels: the communes, the cantons and the confederation. Switzerland is located in the centre of Europe and is geographically and politically well connected to the European Union (though not a Member State). Its political ties include, among others, a comprehensive free trade agreement and a series of bilateral treaties with the European Union (EU).

Switzerland's stable political system and economy, its strong currency, and its highly developed infrastructure regarding transport, communication, social security and health infrastructure lead to one of the highest quality of life standards worldwide. A liberal employment law together with a high-quality school system, and world-renowned universities and technical institutes enabling significant research capabilities further provide for a strong labour market with a well-educated, multilingual and flexible labour force ensuring high productivity and forming the basis of Switzerland's competitive economy.

The mild tax climate for companies, entrepreneurs and individuals together with the advantage of binding advance tax rulings in general makes Switzerland a preferred destination for any kind of international businesses.

Owing to these excellent investment conditions, many multinational groups based in Switzerland have successfully grown such as Nestlé, ABB, Swatch Group, Glencore, Novartis, Swiss Re, Roche, Credit Suisse, UBS, etc. Further, many foreign multinationals have domiciled their European or EMEA headquarters in Switzerland for further expansion.

1 Michael A Barrot is a partner at Bratschi Wiederkehr & Buob Ltd.

## II COMMON FORMS OF BUSINESS ORGANISATION AND THEIR TAX TREATMENT

Most businesses in Switzerland are organised in the form of Swiss corporate entities. Furthermore, many foreign companies also use the form of a Swiss branch to conduct their business in Switzerland. If these branches are considered as permanent establishments (PEs) for Swiss tax purposes, their tax treatment follows the Swiss companies, but they are not subject to Swiss withholding tax.

### i Corporate

The most popular and widespread type of business entity under Swiss law is the corporation, also called company limited by shares (AG), whereas smaller business is usually organised in the form of a limited liability company (GmbH). Limited liability companies (LLCs) are often used by US groups as LLCs qualify from a US tax perspective for 'check the box' rules. Enterprises constituted in this form have their own name, their own legal personality separate from their members and a fixed nominal capital divided into shares. The shareholders' personal liabilities are generally limited to the full payment of the nominal value of their shares. The formation requires the adoption of related resolutions by the founder(s), the minutes of which are to be established in the form of a public deed (to be notarised), followed by the registration of the new legal entity thus formed in the commercial register of the respective canton.

The relevant differences between the corporation and the LLC are as follows:

*a* the minimum amount of the share capital for a corporation is 100,000 Swiss francs, the respective amount for a LLC is 20,000 Swiss francs;

*b* a corporation can have registered or bearer shares, whereas a LLC is limited to registered shares only; and

*c* the articles of association of a LLC can be more restrictive with respect to transfers of shares than those of a corporation.

The corporate bodies of a corporation are the general meeting of shareholders, the board of directors and the auditors. Swiss corporate law does not provide for a further body or level of 'officers'. Provided that certain thresholds are not met, the legal entities are subject to a limited audit or can opt out from the audit.

### ii Non-corporate

Swiss company law provides for general and limited partnerships. However, only smaller businesses run by individuals and a few private banks use those forms of partnerships. This is because Swiss corporate law requires that all general partners of a general or limited partnership must in almost all cases be individuals. Swiss partnerships are usually treated as transparent for Swiss tax purposes.

## III DIRECT TAXATION OF BUSINESSES

Switzerland has a strongly federalist structure, which becomes evident also in its taxation system. While the levy of certain, primarily indirect taxes (VAT, stamp taxes, withholding

tax on dividends, etc.) is reserved to the Swiss federal government, other taxes – primarily the direct taxes on income – are levied not only by the Swiss federal government, but also at the levels of the cantons and the communes. The legislative power with regard to the cantonal and communal taxes are generally with the legislative bodies of the 26 Swiss cantons. Although a federal law aiming at harmonising the cantonal tax laws in certain respects exists, in fact there is still a considerable variety of different cantonal tax systems and rules. In particular, the endeavours to harmonise cantonal and communal tax rules have to date not included the rates of taxation. As a result, the effective income and capital tax burden does vary considerably from canton to canton and even between the communes of one given canton.

The codified tax law at the different levels (federal, cantonal and communal) is not very detailed as compared to the tax legislations of many other industrialised countries. Hence, the tax administrations at the different levels enjoy a considerable degree of discretion in the application of the tax laws. These laws are open enough to allow the cantonal authorities, within certain limits, to enter into private rulings with corporate taxpayers subject to their tax jurisdiction.

### i Tax on profits

#### *Determination of taxable profit*

Swiss-resident companies are generally liable for federal, cantonal and communal taxes on their worldwide income. At the cantonal and communal level, corporations also owe an annual capital tax on their net equity (paid-in share capital, surplus and retained earnings). Depending on the canton, the effective capital tax burden may range from 0.05 per cent up to 1 per cent.

Income and capital attributable to a foreign PE or foreign real estate is exempt from Swiss tax; it is, however, taken into consideration for determining the applicable cantonal and communal tax rate in those cantons that apply a graduated corporate income tax rate.

The income tax liability of each resident company of a group of companies (whether Swiss or foreign controlled) is calculated on the basis of the net profit shown in its statutory financial statements, subject to possible adjustments for tax purposes. If the company does not comply with the Swiss tax accounting principles in preparing its statutory financial statements, certain differences in the timing of recognition of specific profits and losses may occur for tax purposes compared to the commercial accounts.

Income from qualifying participations may benefit from a tax relief, if certain requirements are met.

As a rough rule, the federal taxes of an ordinarily taxed company account for approximately one-third and the combined cantonal and communal taxes for approximately two-thirds of the total direct tax burden, depending on the corporation's canton and commune of residence.

#### *Capital and income*

In general, there is no distinction between the taxation of income and of capital gain at the level of companies. However, certain differences may occur in connection with the participation exemption regime.

***Losses***

Swiss companies may offset generated profit against a loss incurred during the preceding seven years (tax loss carry forward). In the event of a recapitalisation, respective gains from the waiver of debt might be offset for extended periods.

Losses may survive a change of ownership, if the ownership was not solely motivated by those existing losses but rather by commercial interests.

***Rates***

At the federal level, corporate taxpayers are subject to a flat rate of 8.5 per cent on their taxable income (net profit). Please note the possibility to deduct the tax charges itself from the taxable income according to Swiss tax law. Therefore, an effective tax rate of 7.83 per cent results on the annual net profit.

In connection with the cantons and the communes, which can set their tax rates at their own discretion according to Swiss tax legislation, the aggregate effective corporate federal, cantonal and communal corporate income tax rate may vary between approximately 12 per cent and 25 per cent.

***Administration***

The corporation tax return has to be filed on an annual basis within three months upon completion of the relevant business year. Extensions for a later filing are available and widely used. During the business year, provisional taxes may be due, which are usually invoiced on an estimate basis (down payments) or have to be provisioned for in the accounts.

Swiss tax law does not foresee a specific pre-scheduled cycle for tax audits. However, each company is subject to an audit from time to time.

***Tax grouping***

Swiss tax law does not foresee a tax grouping or a loss consolidation for corporation tax purposes. Each company has to draw on a stand-alone basis its own financial statements and file its own tax return. Only losses incurred at the level of PEs (including abroad) may be deducted from the taxable profit. Losses from a foreign PE may be recaptured in order to avoid a double deduction of losses abroad and in Switzerland itself. In return, a Swiss PE cannot set off foreign headquarters losses against profits attributable to this PE.

### ii Other relevant taxes

***Capital tax***

The corporate capital tax is a cantonal and communal tax levied on the net capital, consisting of paid-in share capital, surplus and retained earnings or on the dotation capital of Swiss PE of foreign companies. No such tax exists at the federal level.

***Real estate capital gain tax***

Some cantons know a specific real estate capital gain tax that applies upon a disposal in Swiss real estate. Real estate capital gain tax is levied on the capital gain of real estate that is situated within the territory of the respective canton. The applicable tax rate is significantly dependent on the duration of the holding period of the real estate. Some

cantons do not levy such specific real estate capital gain tax, but rather treat any realised capital gain as part of the ordinary business income subject to corporate income tax.

***Real estate transfer tax***

Most cantons (not Zurich) and/or communes know real estate transfer tax that applies upon a transfer in Swiss real estate. Real estate transfer tax is levied on the consideration for the real estate.

***Capital issuance stamp duty***

The contribution of equity to a Swiss company is generally subject to a capital issuance stamp duty at a rate of 1 per cent of the fair market value of the assets paid or contributed. Exemptions from the 1 per cent stamp duty may, however, be available in situations of a corporate reorganisation (merger, spin-off, etc.), certain financial restructurings and where a corporate entity, which originally was incorporated abroad, moves its registered seat and domicile into Switzerland. Furthermore, the first 1 million Swiss francs of contributed capital is exempt from the stamp duty.

***Securities transfer stamp duty***

The transfer of securities issued by a Swiss or foreign issuer for a consideration is subject to the securities transfer stamp duty, if at least one of the parties to, or an intermediary in, the transaction is a qualified Swiss securities dealer. The transfer stamp duty is calculated on the consideration paid; the tax rates are 0.15 per cent for Swiss and of 0.3 per cent for foreign securities.

***Value added tax***

Switzerland imposes a VAT on the delivery of goods and services rendered in Switzerland. The standard tax rate is 8 per cent. Reduced rates apply to specific classes of consumables such as food, drinks, medicines, etc. and on tourism services such as hotels, etc.

## IV TAX RESIDENCE AND FISCAL DOMICILE

### i Corporate residence

Legal entities (i.e., corporations, limited liability companies, cooperatives, associations and foundations) are subject to Swiss federal, cantonal and communal corporate income tax if they are resident (i.e., if they are incorporated or effectively managed and controlled in Switzerland).

### ii Branch or permanent establishment

Legal entities not incorporated in, but effectively managed and controlled in Switzerland are subject to Swiss federal, cantonal and communal corporate income tax if they have a PE or a fixed place of business located in Switzerland. Therefore, any profits and gains attributed to such a PE or fixed place of business of a foreign corporate entity are treated the same way as described for Swiss tax resident legal entities. However, as there are no dividend distributions from a PE or a fixed place of business, the Swiss withholding tax does not apply with regard to the repatriation of funds.

In order to avoid the qualification as a PE or a fixed place of business, such local presence should have no authority to conclude or negotiate contracts in the name of the foreign legal entity and that the competence is strictly limited to marketing and promotion activities.

## V TAX INCENTIVES, SPECIAL REGIMES AND RELIEF THAT MAY ENCOURAGE INWARD INVESTMENT

### i Participation exemption relief

A tax relief applies to dividend income derived by Swiss-resident companies from substantial participations. A participation is considered 'substantial', if it represents a control of at least 10 per cent of the share capital or of 10 per cent of the profit entitlements of another company or if it has a fair market value of at least 1 million Swiss francs. Such qualifying dividend income may benefit from the 'participation deduction', which is equal to the ratio between the 'net participation income' and the total net income of the corporation. The 'net participation income' is defined as follows:

Gross dividend income from substantial participations
./. non-refundable foreign withholding taxes
./. financing costs related to the respective participations
./. 5 per cent of the dividend income for covering administrative costs
= 'net participation income'

The deduction ratio so determined is applied to the amount of income tax computed on the total net profit including the qualifying dividend income. The participation deduction is not granted to the extent that the book value of the underlying participation is amortised as a consequence of the dividend distribution.

The participation exemption relief can also be claimed in respect of realised capital gains. The tax relief on capital gains is subject to the following prerequisites:

*a* the participation sold must represent at least 10 per cent of the other's companies capital;
*b* the participation must have been held for at least one year; and
*c* the capital gain qualifies for the 'Beteiligungsabzug' only to the extent that the sales proceeds exceed the cost value of the participation. Any gain portion representing recaptured depreciation does not qualify.

### ii Holding company regimes

Holding companies are exempt from cantonal and communal corporate income tax in all Swiss cantons, provided the respective requirements are met:

*a* the purpose of the company as stated in the articles of association is the holding and management of participations in affiliated companies;
*b* the income deriving from the participations equals at least two-thirds of the total income generated by the company or that two-thirds of the assets as stated in the balance sheet consist of qualifying participations; and
*c* the company is not engaged in any commercial activities in Switzerland.

The cantons may accept certain minor activities in particular management, administration and licensing, which, however, vary from canton to canton.

Like all other legal entities subject to federal corporate income tax, holding companies are taxed 8.5 per cent on their taxable income. Please note the possibility to deduct the tax charges itself from the taxable income according to Swiss tax law. Therefore, an effective tax rate for holding companies of 7.83 per cent results on the annual net profit. However, the participation relief as described above can also be claimed at the federal level leading to an almost total exemption of dividends and capital gains from taxation.

### iii Domicile (administration, mixed or auxiliary) company regime

These legal entities do not carry on any, or only a limited amount of business activities within Switzerland. A domicile company has no employees and no office infrastructure in Switzerland and carries out all of its business abroad. A mixed, administration or auxiliary company may have offices and personnel in Switzerland and may carry out subordinated support functions or minor trading activities in Switzerland, which, however, must be subordinated to the company's non-Swiss business. A mixed company must derive at least 80 per cent of its gross income from non-Swiss sources (e.g., trading with foreign counterparties) and should generally incur at least 80 per cent of its expenses (including cost of goods sold) outside Switzerland.

Swiss companies (and branches or foreign companies) with these characteristics are eligible for special tax treatment at the cantonal and communal level (no particular tax status exists at the federal level). Ordinary income from Swiss sources is subject to standard cantonal and communal taxation. Ordinary income from non-Swiss sources is partly exempt from tax (typically for a fraction of 70–90 per cent). Income and gains from substantial equity investments in other corporate entities are fully exempt from tax. The effective tax rate of such companies is usually in the range of 8 to 11 per cent.

### iv IP regime

As of 1 January 2014, only the canton of Nidwalden has introduced at the cantonal and communal level a specific IP regime for companies, which generate income from IP rights. According to this regime, any income earned (i.e., royalties, capital gains from the disposal) in connection with the IP rights is subject to a corporate income tax rate of 8.8 per cent.

As the existing special tax regimes as described above (i–iii, apart from the IP regime) will be abolished by the Swiss Corporate Tax Reform III, it is expected that most cantons will introduce IP regimes as well.

### v State aid

Industrial or commercial enterprises moving from abroad into Switzerland may in almost all cantons be granted a partial or even a full exemption from the cantonal or communal and, in certain defined geographical areas of less economic growth, also from the federal income and capital taxes for the maximum duration of 10 years. Such exemptions must be negotiated with the cantonal authorities and generally require that a substantial number of new jobs is created in a region with high unemployment.

## VI WITHHOLDING AND TAXATION OF NON-LOCAL SOURCE INCOME STREAMS

### i Withholding outward-bound payments (domestic law)

The Swiss federal government levies a withholding tax at a rate of 35 per cent on the gross amount of:

*a* dividends, including constructive and liquidation dividends distributed by a Swiss company;
*b* interest paid on publicly offered bonds, debentures and other instruments of indebtedness issued by a Swiss-resident borrower;
*c* distributions by a Swiss investment fund; and
*d* interest on customers' deposits with a Swiss bank.

There is, however, no withholding tax on interest paid in connection with straight loans as well as on rent, royalties and fees regarding licences, management and technical assistance, and no withholding tax is levied on dividends that are paid out of additional paid-in capital.

### ii Double taxation treaties

Switzerland has concluded bilateral tax treaties with more than 90 countries including the United States, Canada, Japan and most European countries. Further, Article 15 of the Switzerland–EU Savings Tax Agreement provides for a full withholding tax relief on dividends paid by a Swiss company to a parent company resident in any EU Member State, if the parent holds at least 25 per cent of the shares of the Swiss company for at least two years, and vice versa, as well as full withholding tax relief on interest and royalties.

Switzerland follows the exemption method pursuant to Article 23A of the OECD Model Convention and grants a tax credit for foreign residual withholding taxes, provided a respective double tax treaty is applicable.

The following is an overveiw of the current tax treaties applicable.

| | *Dividends* | | | | |
|---|---|---|---|---|---|
| | | *Participations* | | | |
| *Country* | *Portfolio rate* | *Rate* | *Per cent* | *Interest* | *Royalties* |
| Albania | 15 | 5 | 25 | 5 | 5 |
| Algeria | 15 | 5 | 20 | 10 | 10 |
| Argentina* | / | / | / | / | / |
| Armenia | 15 | 5 | 25 | 10 | 5 |
| Australia | 15 | 15 | — | 10 | 10 |
| Austria | 15 | 0 | 20 | 0 | 0 |
| Azerbaijan | 15 | 5 | 20 | 10 | 10/5 |
| Bangladesh | 15 | 10 | 20 | 10 | 10 |

| *Country* | *Dividends* | | | *Interest* | *Royalties* |
|---|---|---|---|---|---|
| | *Portfolio rate* | *Participations* | | | |
| | | *Rate* | *Per cent* | | |
| Belarus | 15 | 5 | 25 | 8 | 10/5/3 |
| Belgium | 15 | 10 | 25 | 10 | 0 |
| Bulgaria | 10 | 0 | 10 | 10 | 0 |
| Canada | 15 | 5 | 10 | 10 | 10 |
| Chile | 15 | 15 | — | 15/5 | 10/5 |
| China | 10 | 10 | — | 10 | 10 |
| Taiwan | 15 | 10 | 20 | 10 | 10 |
| Columbia | 15 | 0 | 20 | 10 | 10 |
| Croatia | 15 | 5 | 25 | 5 | 0 |
| Czech Republic | 15 | 0 | 10 | 0 | 5 |
| Denmark | 15 | 0 | 10 | 0 | 0 |
| Ecuador | 15 | 15 | — | 10 | 10 |
| Egypt | 15 | 5 | 25 | 15 | 12.5 |
| Estonia | 15 | 5 | 20 | 10 | 10 |
| Finland | 10 | 0 | 10 | 0 | 0 |
| France | 15 | 0 | 10 | 0 | 5 |
| Georgia | 10 | 0 | 10 | 0 | 0 |
| Germany | 15 | 0 | 10 | 0 | 0 |
| Ghana | 15 | 5 | 10 | 10 | 8 |
| Greece | 15 | 5 | 25 | 7 | 5 |
| Hong Kong | 10 | 0 | 10 | 0 | 3 |
| Hungary | 10 | 0 | — | 10 | 0 |
| India | 10 | 10 | — | 10 | 10 |
| Indonesia | 15 | 10 | 25 | 10 | 10 |
| Iran | 15 | 5 | 15 | 10 | 5 |
| Ireland | 15 | 0 | 10 | 0 | 0 |
| Iceland | 15 | 5 | 25 | 0 | 0 |
| Israel | 15 | 5 | 10 | 10 | 5 |
| Italy | 15 | 15 | — | 12.5 | 5 |
| Ivory Coast | 15 | 15 | — | 15 | 10 |
| Jamaica | 15 | 10 | 10 | 10 | 10 |

| *Country* | *Dividends* | | | *Interest* | *Royalties* |
|---|---|---|---|---|---|
| | *Portfolio rate* | *Participations* | | | |
| | | *Rate* | *Per cent* | | |
| Japan | 10 | 5/0 | 10/50 | 10 | 0 |
| Kazakhstan | 15 | 5 | 10 | 10 | 10 |
| Korea | 15 | 5 | 10 | 10 | 5 |
| Kuwait | 15 | 15 | — | 10 | 0 |
| Kyrgyzstan | 15 | 5 | 25 | 5 | 5 |
| Latvia | 15 | 5 | 20 | 10 | 10 |
| Liechtenstein | — | — | — | — | — |
| Lithuania | 15 | 5 | 20 | 10 | 10 |
| Luxembourg | 15 | 0 | 10 | 10 | 0 |
| Macedonia | 15 | 5 | 25 | 10 | 0 |
| Malaysia | 15 | 5 | 25 | 10 | 10 |
| Malta | 0 | 0 | 25 | 10 | 0 |
| Mexico | 15 | 0 | 10 | 10/5 | 10 |
| Moldova | 15 | 5 | 25 | 10 | 0 |
| Mongolia | 15 | 5 | 25 | 10 | 0 |
| Montenegro | 15 | 5 | 20 | 10 | 0 |
| Morocco | 15 | 7 | 25 | 10 | 10 |
| Netherlands | 15 | 0 | 10 | 0 | 0 |
| New Zealand | 15 | 15 | — | 10 | 10 |
| Norway | 15 | 0 | 10 | 0 | 0 |
| Pakistan | 20 | 10 | 20 | 10 | 10 |
| Philippines | 15 | 10 | 10 | 10 | 15 |
| Poland | 15 | 0 | 10 | 5 | 5 |
| Portugal | 15 | 0 | 25 | 10 | 5 |
| Qatar | 15 | 5/10 | 10 | 0 | 0 |
| Romania | 15 | 0 | 25 | 5 | 0 |
| Russia | 15 | 5 | 20 | 0 | 0 |
| Serbia | 15 | 5 | 20 | 10 | 0 |
| Singapore | 15 | 5 | 10 | 5 | 5 |
| Slovakia | 15 | 0 | 10 | 5 | 5 |
| Slovenia | 15 | 0 | 25 | 5 | 5 |

| *Country* | *Dividends* | | | *Interest* | *Royalties* |
|---|---|---|---|---|---|
| | | *Participations* | | | |
| | *Portfolio rate* | *Rate* | *Per cent* | | |
| South Africa | 15 | 5 | 20 | 5 | 0 |
| Spain | 15 | 0 | 10 | 0 | 5 |
| Sri Lanka | 15 | 10 | 25 | 10/5 | 10 |
| Sweden | 15 | 0 | 10 | 0 | 0 |
| Tajikistan | 15 | 5 | 20 | 10 | 5 |
| Thailand | 15 | 10 | 10 | 15/10 | 10/5 |
| Trinidad and Tobago | 20 | 10 | 10 | 10 | 10 |
| Tunisia | 10 | 10 | — | 10 | 10 |
| Turkey | 15 | 5 | 20 | 10/5 | 10 |
| Turkmenistan | 15 | 5 | 25 | 10 | 10 |
| Ukraine | 15 | 5 | 20 | 10 | 10 |
| United Arab Emirates | 15 | 5 | 10 | 0 | 0 |
| United Kingdom | 15 | 0 | 10 | 0 | 0 |
| United States | 15 | 5 | 10 | 0 | 0 |
| Uruguay | 15 | 5 | 25 | 10 | 0 |
| Uzbekistan | 15 | 5 | 20 | 5 | 5 |
| Venezuela | 10 | 0 | 25 | 5 | 5 |
| Vietnam | 15 | 10/7 | 25/50 | 10 | 10 |
| * The double tax treaty with Argentina is subject to ratification and will come into force in the course of 2015. | | | | | |

### iii Taxation on receipt

Swiss-resident entities are subject to Swiss corporate income tax for income on a worldwide basis, apart from income from foreign real estate and foreign PE. Furthermore, a participation relief (see above) is granted for income from qualifying participations. The participation relief applies irrespectively of the jurisdiction of the qualifying participations, as Switzerland does not have any CFC rules.

## VII TAXATION OF FUNDING STRUCTURES

### i Thin capitalisation

The Federal Tax Administration issued a circular letter on 6 June 1997 on the criteria for hidden equity capital. For purposes of the federal direct tax, the letter lays down detailed thin capitalisation rules. The total debt provided by shareholders or affiliated parties should not exceed the aggregate (market) value of the following assets of the company,

as the case may be, reduced by the total interest-bearing debt capital from independent third parties (such as banks) at the end of the year:

*a* 100 per cent of cash;
*b* 90 per cent of Swiss and foreign bonds issued in Swiss francs;
*c* 85 per cent of loans and advances, receivables on supplies and services;
*d* 85 per cent of inventory;
*e* 85 per cent of other current assets;
*f* 80 per cent of foreign bonds issued in foreign currencies;
*g* 70 per cent of participations;
*h* 60 per cent of Swiss and foreign shares listed on a stock exchange
*i* 50 per cent of other shares or investments in limited liability companies;
*j* 70 per cent of operating real estate;
*k* 70 per cent of private real estate, holiday homes and zoned land;
*l* 80 per cent of other immoveable property;
*m* 50 per cent of machinery and equipment; and
*n* 70 per cent of other intangible assets.

As a general rule, finance companies may have a maximum debt-to-equity ratio of 6:1, whereas holding companies are subject to the above-mentioned debt-to-equity financing rules. These rules can be overruled by an arm's-lengthassessment. The excess debt finance is deemed to be equity if it is provided by a shareholder or someone close to him or her or if it is guaranteed by such a person while being provided by a third party. Interest on deemed equity is not deductible for corporate income tax purposes and, in addition, subject to 35 per cent withholding tax (qualification as constructive dividend).

For the calculation of excess interest, the maximum debt amount is multiplied by the safe harbor maximum interest rate published by the Federal Tax Administration on a regular (usually annual) basis. Only to the extent that the effective amount of interest paid is higher than the maximum amount calculated in accordance with the formula mentioned above, an adjustment to taxable profits and a recharacterisation into a dividend is made.

### ii Deduction of finance costs

Finance costs (e.g., interest payments) paid to third parties are usually deductible for tax purposes. Payments of finance costs to related parties, however, have to comply with the thin capitalisation rules (see above) and the maximum interest rates annually published by the Federal Tax Administration. For 2014, a maximum interest rate of 3.25 per cent (holding companies) and 3.75 per cent (trade and industrial companies) is accepted for loans granted in Swiss francs. Different interest rates apply for foreign currencies.

### iii Restrictions on payments

Swiss tax authorities consider interest payments on debt exceeding the thin capitalisation rules as well as interest payments in excess of the minimum interest rates as hidden profit distribution subject to withholding tax at a rate of 35 per cent.

### iv Return of capital (capital contribution principle)

According to the capital contribution principle, all contributions (i.e., share capital but also additional paid-in capital) to a legal entity may be repaid to the shareholder free of withholding tax. In addition, such return of capital is exempt from income taxation for Swiss-resident individuals holding their shares as private assets. However, qualified additional paid-in capital has to be separately accounted for in the accounts in order to benefit from this regulation.

## VIII ACQUISITION STRUCTURES, RESTRUCTURING AND EXIT CHARGES

### i Acquisition

Swiss tax regulations do not foresee a group taxation regime. Therefore, any interest payments paid in connection with acquisition finance costs pushed down to the target company will not be accepted by most cantons as deductible expenses following the first five years after the acquisition. Alternatively, the acquiring company may indirectly push down part of the acquisition finance costs through a capital reduction or a distribution of reserves of the target company, which is in principle accepted.

### ii Reorganisation

The Swiss tax law contains specific provisions, which provide for tax-neutral group reorganisations regarding all Swiss taxes applicable such as corporate income tax, withholding tax, stamp duties, income tax at the shareholder level, real estate capital gains taxes, real estate transfer taxes and VAT.

### iii Exit (corporate migration)

According to Swiss tax law, the exit of a Swiss-resident company is regarded for withholding tax purposes as a liquidation. Therefore, the withholding tax is due on the so-called liquidation proceeds, which is the difference of the market value of the assets, and the nominal value including any additional paid-in capital reserves of the company. In addition, the difference between the market value of the assets and the book value of the assets is subject to corporate income tax, provided that the assets will leave the territory of Switzerland.

## IX ANTI-AVOIDANCE AND OTHER RELEVANT LEGISLATION

### i General anti-avoidance

In 1962, Switzerland introduced on a unilateral basis an anti-abuse decree, which applies to outbound investments of companies resident in Switzerland. Mere conduit companies shall have no access to the extensive Swiss double taxation treaty network. In particular, the decree provides for minimum distribution requirements regarding certain companies.

Based on case law of the Swiss Supreme Court, a general anti-avoidance doctrine is applied by the Federal Tax Administration on inbound investments. In the event of

treaty shopping, the Federal Tax Administration refuses to refund the withholding tax deducted from dividend distributions.

### ii Controlled foreign corporations

There are no specific CFC rules with respect to controlled foreign companies pursuant to Swiss tax law.

### iii Transfer pricing

Switzerland follows the OECD model transfer pricing guidelines. Apart from that, Swiss tax law does not provide for any additional transfer pricing regulations or documentary requirements, which have to be taken into consideration with regard to intra-group transactions.

### iv Tax clearances and rulings

Switzerland is very well known for its advance tax ruling practice. This practice is often used in order to obtain certainty with regard to the tax treatment of a specific transaction. Usually, the tax ruling procedure takes just a few weeks and is regularly part of the overall transaction work. The Swiss tax authorities at the federal as well as at the cantonal and communal level are bound by a valid tax ruling as long as the facts and circumstances have been properly documented.

## X YEAR IN REVIEW

The Federal Supreme Court recently rendered an important decision regarding additional requirements for the declaration of the withholding tax in the context of the reporting procedure. Under certain circumstances, the withholding tax duty can be fulfilled by a respective declaration (reporting procedure) rather than deducting the 35 per cent on the gross amount and remitting it to the Federal Tax Administration. The withholding tax declaration in the reporting procedure (form 106 or 108) must take place in all cases within 30 days after the dividend due date. If the 30-day deadline is missed, the taxpayer definitely forfeits the right to the reporting procedure.

In the international context, the reporting procedure can only be used in connection with a valid authorisation, either on the basis of the Savings Tax Agreement with the European Union (form 823C), or on the basis of a double tax treaty (form 823B). Provided the facts remain unchanged, this authorisation is valid for three years.

If the deadline is missed respectively no form 106/108 filed although the general authorisation has been granted (form 823B/823C), the right to the reporting procedure is forfeited. In this case, the withholding tax has to be paid, and the shareholder has to request its refund. In addition, a late interest penalty of 5 per cent on the owed withholding tax amount is due for the period starting from the 30th day after the dividend due date.

Further, in November 2014 the Swiss public voted in a popular referendum for the retention of the lump-sum taxation regime on a federal level for individuals. Under

the lump-sum taxation regime, income tax for qualifying individuals is calculated on the basis of their total annual living expenses incurred by taxpayers in Switzerland and abroad.

## XI OUTLOOK AND CONCLUSIONS

Since 2007, Switzerland is in discussions with the European Union regarding its privileged tax regimes. The federal and cantonal governments have reacted and are currently reshaping the Swiss tax legislation. After having published its final report on 'Measures to strengthen the competitiveness of the Swiss tax system' in December 2013, the Federal Council initiated the consultation phase on 22 September 2014 with the publication of a legislative draft for Corporate Tax Reform III.

The aim of Corporate Tax Reform III is to maintain and further develop Switzerland's position as one of the most attractive business locations worldwide, while increasing international acceptance of its corporate tax legislation and sustainably securing adequate tax revenues to finance public activities.

The legislative draft is based on the following pillars:

*a* introduction of a licence box at the cantonal level;

*b* notional interest deduction: This will support the retention of financing functions in Switzerland, and should generally favour well-financed companies;

*c* step-up mechanism to reveal hidden reserves;

*d* general lowering of cantonal corporate income tax rates; and

*e* further measures (i.e., abolishment of the stamp issuance duty, changes to offset loss carry forwards, amendments to the participation deduction, capital gains for privately held securities and amendments to the partial taxation of participation income).

## Appendix 1

# ABOUT THE AUTHORS

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Michael A Barrot graduated from the University of Bern in 2002, was admitted to the Zurich Bar in 2005 and joined a renowned law firm in Zurich as an associate in the same year. In 2007 he received his Master of Laws (LLM) from the University of California, Los Angeles, and he became a certified tax expert in 2010. In April 2014 he joined Bratschi Wiederkehr & Buob Ltd as a tax partner.

He is a member of the Swiss Bar Association, the Zurich Bar Association, the Swiss Institute of Certified Accountants and Tax Consultants, the International Fiscal Association, and the Swiss Association of Certified Tax Experts.

Mr Barrot specialises in domestic and international tax. He advises Swiss and international companies on corporate reorganisations, real estate and capital market transactions as well as employee participation programmes. Other areas of expertise include tax planning for Swiss and foreign private clients and domestic tax litigation.

He is part of the taxation, companies and transactions and contracts, practice groups, as well as the financial services industry group.

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