



Swiss withholding tax: improvements in the group reporting procedure

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The Swiss withholding tax of 35% is levied at source on certain income and benefits (in particular on dividends, bonds, shares in investment funds, bank deposits) and must be passed on by the debtor (e.g. a Swiss corporation) to the recipient of this taxable benefit (e.g. a foundation registered in Liechtenstein). The recipients therefore only receive 65% of the taxable benefit and must reclaim the remaining 35% from the Federal Tax Administration [ESTV] by means of a refund.

The refund procedure is simplified by the so-called reporting procedure, in which the deduction and refund of the Swiss withholding tax is replaced by a simple reporting of the taxable benefit. Consequently, this means that no deduction at source has to be made at the level of the distributing Swiss investee and the holder of the participation rights resident in Liechtenstein does not have to reclaim such withholding tax from the ESTV.

Amendments and extension of the reporting procedure

The Swiss Federal Council decided on 4 May 2022 to amend the Ordinance on the Group Reporting Procedure for Withholding Tax Purposes. With the reporting procedure, the payment of tax with subsequent refund in the group relationship becomes redundant.

The adopted amendments shall enter into force on 1 January 2023 and are as follows:

Reporting procedure for domestic group relationships

- The participation quota required for the reporting procedure is to be reduced to 10% in the domestic relationship (instead of 20% as before);
- The scope of application of the reporting procedure will be extended insofar as it will in future be applicable to all legal entities holding a qualifying participation (instead of only to corporations and cooperatives as before).

Reporting procedure for international group relationships

- The participation quota required for the reporting procedure is generally determined by the applicable Double Taxation Agreement (DTA) and is usually between 10%-25%; otherwise, national law provides for a 10% participation quota (instead of 20% as before);
- The scope of application of the reporting procedure will be extended insofar as it will in future be applicable to all entities within the meaning of the applicable DTA that hold a substantial participation (instead of only to corporations as before);
- The authorization for the application of the reporting procedure shall now be valid for five years (instead of three years as before).

DTA CH-FL

With regard to the applicability of the reporting procedure in relation to Liechtenstein, the following specific changes will result after the entry into force (from 1 January 2023):

- For the purposes of the agreement, the term "company" includes a legal person or entity that is treated like a legal person for taxation purposes. Thus, for example, **Liechtenstein foundations, associations, establishments similar to foundations and trust enterprises** may now also apply for the reporting procedure if they fulfill the requirements of the refund.
- The other requirements to be fulfilled for the refund of withholding tax for foundations as well as establishments similar to foundations and trust enterprises continue to apply unchanged.

- The initial authorization or extension of the reporting procedure will now be granted for a period of five years.

Concluding remarks

Due to the extension of the reporting procedure to all legal entities - such as Liechtenstein foundations - the administrative effort for the refund of the Swiss withholding tax is considerably reduced, since within the scope of the reporting procedure only a simple declaration has to be made to the ESTV instead of an extensive refund application (including enclosures). Furthermore, the application of the reporting procedure can also result in an advantage in terms of liquidity, since the Swiss withholding tax no longer has to be paid and reclaimed from the Liechtenstein foundation. Finally, the extension of the authorization period to five years may further increase the attractiveness of the reporting procedure (however, the reporting to the ESTV in the event of changes in the participation structure during the term of the authorization remains unaffected).

Recommendations

We recommend in particular that asset management structures in Liechtenstein which hold significant Swiss participations (i.e. with a participation quota of at least 10%) and regularly receive dividends consider the application of the reporting procedure in order to avoid time-consuming refund procedures in the future. In addition, it should also be worthwhile for charitable foundations in particular to make use of the reporting procedure, especially since they should generally fulfil the refund requirements under the DTA CH-FL.

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