Swiss Taxes Newsletter – April 2021

1) Proposed Amendments to the Regulation on notification in lieu of payment of federal withholding tax on qualified subsidiary-to-parent dividends

The Swiss Federal Government proposes to amend the regulation (Ordinance) on the so-called "notification procedure" for the withholding tax on dividend distributions by Swiss subsidiaries ("qualifying investments") to their Swiss (and foreign) parent companies. Generally, such distributions are subject to 35% federal withholding tax, even where made to Swiss resident shareholders – except for special situations where the deduction and payment of the withholding tax may be substituted by a mere "notification" of the dividend to the Federal Tax Administration (FTA), such as subsidiary-parent dividends. In a domestic setting, the qualifying participation threshold for the dividend notification in lieu of deduction and payment of 35% WHT (and subsequent refund of the WHT to the shareholder on request) is proposed to be reduced from currently 20% to 10%. In cross-border, tax treaty situations, the validity of the necessary FTA permits (to be applied for by filing a Form 823B or 823C) allowing for WHT relief at source through the notification process is proposed to be extended from currently 3 years to 5 years. This is supposed to "make life easier" for both taxpayers and the FTA. The public hearing process on the proposed amendments was opened on 14 April and will end on 14 July 2021.

2) Proposed partial reform of the Federal Withholding Tax Act - abolition of withholding tax on bond interest

On 15 April 2021, the Federal Council published its dispatch to the Federal Parliament on the proposed partial reform of the Federal Withholding Tax Act. The reform is designed to strengthen the Swiss debt capital market.

a. Essentially it is proposed to abolish the 35% federal WHT on interest paid on bonds issued by Swiss resident issuers, including "collective debt" instruments likened to "bonds" for federal withholding tax and stamp duty purposes.
b. Furthermore, it is proposed to abolish the federal securities transfer stamp duty (of maximum 0.15%) on transfers for consideration of "bonds" issued by Swiss resident issuers in the secondary market.
c. Finally, the draft reform bill suggests an extension of the 35% withholding tax liability to compensation payments for Swiss dividends and other items subject

to federal withholding tax ("manufactured payments"), which occur mainly in the context of securities lending/borrowing and repo arrangements, as well as "cum/ex" deals (short sales of Swiss stock cum dividend coupon).

For more details on the WHT reform, please refer to our recent publication (Peter Reinarz, *Reform of the Swiss Federal Withholding Tax on Interest*, Kluwer International Tax Blog, 26 March 2021, http://kluwertaxblog.com/2021/03/26/reform-of-the-swiss-federal-withholding-tax-on-interest/).

3) New Swiss double tax treaties with Brazil and Saudi Arabia, came recently into force; as far as withholding taxes are concerned, the treaties will become applicable as of January 1st, 2022.

The new Swiss double taxation treaties with Brazil and with Saudi Arabia came recently into legal force.

a. The DTT with Brazil will reduce WHT on cross-border dividends generally to 15%. The residual WHT rate will be 10% where the beneficiary is a corporate entity owning at least 10% of the subsidiary's stock for a minimum duration of 365 days. Qualifying pension funds and the central banks of the Contracting States may benefit of a 0% residual WHT rate. WHT on interest is in principle limited to 15%; 10% in certain cases (bank loans of at least 5 years funding equipment purchases and infrastructure investments) and 0% for qualifying pension funds and central governments and their agencies. WHT on royalties is limited to 15% for trademark licenses, 10% for other royalties (Switzerland does not impose any WHT on outbound royalties). Brazilian-sourced technical service fees may be taxed at 10%, subject to a most-favored nations clause.

b. The DTT with Saudi Arabia limits dividend WHT to 15% generally; to 5% in the case of subsidiary distributions to a parent company owning at least 10% of the stock, as well as dividends beneficially owned by a central bank a qualifying pension fund, a sovereign wealth fund or another government-owned entity. WHT on interest is limited to 5%, but in many cases to 0% (including inter alia interest on bank loans, on loans granted between corporate entities, loans granted by a government, a central bank, or a qualifying pension institution, and loans funding purchases of equipment, commercial goods or services). WHT on royalties is limited to 7% generally; to 5% on royalties in connection with the use of industrial, commercial or scientific equipment.

c. Both DTTs include a "principal purpose test" and a reservation of the application of unilateral anti-abuse rules (DTT with Saudi Arabia), or a limitation on treaty benefits provision (DTT with Brazil), respectively.