Swiss Taxes Newsletter – May 2022

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

As we have already announced in our April 2021 Tax Newsletter, the Swiss Federal Council has on 4 May 2022 decided to amend the regulation (Ordinance) on the so-called "notification procedure" for the WHT on dividend distributions by Swiss subsidiaries ("qualifying investments") to their Swiss (and foreign) parent companies. Generally, such distributions are subject to 35% WHT. However, in certain cases the deduction and payment of the WHT may be substituted by a mere "notification" of the dividend to the Federal Tax Administration (FTA). Such is the case in particular for dividend distributions by a Swiss company to a qualifying Swiss or foreign parent company.

Under currently existing regulations, a *Swiss parent* company qualifies for WHT relief at source through the notification process, if it holds an equity participation of at least 20% in the distributing Swiss subsidiary. Under the revised regulation, which will become effective as of *1 January 2023*, the minimum participation threshold will be reduced to 10%, and it will apply to all types of Swiss corporate shareholders (currently, it is only available to Swiss corporations and limited liability companies). The same 10% threshold also applies to the eligibility of the dividend income for the participation deduction in the Swiss parent company's hands (even though a participation of under 10% likewise entitles the corporate holder to the participation deduction on dividends, if the participation has a market value of at least CHF 1 million).

As far as dividend distributions to a *non-Swiss parent* company are concerned, the regulations provide for a similar WHT relief at source through a notification process, where the foreign parent entity is resident in a tax treaty jurisdiction. The minimum participation threshold is generally defined by the tax treaty in question, or, where the treaty does not provide for any minimum participation, the minimum threshold is currently 20% and will likewise be reduced to 10% as of 1 January 2023 under the revised regulation. Furthermore, the benefit of the notification process will be available to all foreign parent entities that fall under the definition of "companies" pursuant to the applicable double tax treaty. WHT relief at source through the international notification process requires a prior general approval from the FTA, which must be applied for by the Swiss company by filing a Form. 823 to the FTA; the form must include a tax residence certification on behalf of the foreign parent by the competent foreign tax authority. The FTA's general approval ("823 Permit") currently has a validity term of three years following the date of its issuance; under the revised regulation such validity term will be extended to five years (always subject to the underlying essential facts remaining unchanged).

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% WHT liability to compensation payments for Swiss dividends and other items subject to federal WHT ("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).
d. The reform bill does not affect the 35% federal WHT on dividends by Swiss corporate entities and on income distributions by Swiss collective investment schemes (investment funds), except for fund distributions of underlying bond and notes interest.

We have described the reform bill in more detail in an article published online on 26 March 2021, see http://kluwertaxblog.com/2021/03/26/reform-of-the-swiss-federal-withholding-tax-on-interest. While the reform bill was approved by the Federal Parliament on 17 December 2021, left-wing political parties opposing the bill have asked for a people's referendum, which will be held on 25 September 2022, with uncertain outcome.