



Switzerland improves fiscal environment for internal group financing Revised 10/20 non-bank lender rule

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The so-called 10/20 non-bank lender rule may have required, in some instances, additional planning when Switzerland was chosen as a place for intra-group financing.

With more than 20 non-bank lenders, every Swiss company is deemed to have client deposits (like a normal bank). This requires the company to levy a 35% Swiss withholding tax on all interest paid to its lenders. With a formal hearing launched last December, the Swiss revenue authorities had lodged proposed new regulations for discussion. On 18 June 2010, the Swiss Federal Council (Swiss Government) approved a respective amendment of the withholding tax and stamp tax ordinances which implies that internal group interest payments will be exempted from withholding tax. The amendment enters into force as of 1 August 2010.

In late December 2009, the Swiss federal tax authorities launched a hearing procedure with respect to a proposed amendment of the Swiss withholding and stamp tax law. The proposed amendment relates in particular to a regulation of the Swiss withholding tax law pursuant to which any Swiss corporate entity can become subject to a 35% Swiss withholding tax on interest paid to its creditors. While interest payments on loans payable by a Swiss debtor are usually not subject to Swiss withholding tax, the Swiss debtor may nevertheless become subject to withholding tax if it accepts loans (by way of loan agreement or by accepting monies on current accounts) essentially from more than 20 debtors. Exceeding this threshold triggers the withholding tax duty on all interest paid on such loans or current accounts since the Swiss entity would - for withholding tax purposes - be qualified as a bank. The corollary would be that all interest payments made to all lenders that are not recognized banks would be subject to the 35% Swiss withholding tax. Particularly in the ambit of internal group financing (such as cash pooling arrangement or intra-group loans), this regulation was perceived to be burdensome and hindering. As a consequence, numerous proposals have been launched on the political level to discontinue this rule and to pave the way for a more practical approach towards group financing activities. The now approved revision of the withholding and stamp tax ordinances implies that as of 1 August 2010, all interest payments

on loan agreements or current account relationships between companies pertaining to the same group of companies (meaning all companies which need to be fully consolidated according to generally accepted accounting principles) are no longer subject to withholding.

The new regulation improves the fiscal environment for internal group financing activities, of which predominantly small- and medium-sized Swiss group companies with central cash management as well as foreign groups looking for an attractive cash management site coupled with low tax rates will profit.

The amendment, however, includes a restriction: the new regulation is not applicable for groups in which a Swiss group entity guarantees a bond issued by a foreign group company. Therefore, the possibility of a comprehensive internal group financing activity will de facto be refused for such groups. This restriction should help to distinguish between group internal loans and loans accepted from third parties which could potentially lead to an erosion of the Swiss withholding tax. If a Swiss company guarantees a bond or debenture issued by an affiliated foreign company this could potentially lead to a commingling of the internal and external loans. Due to this, the Swiss tax authorities see themselves unable to scrutinize and audit whether some of the proceeds from a foreign-issued bond has been remitted to and employed in Switzerland, which would be tantamount to tax avoidance.