

TAX News

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Latest developments

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1. International Tax Law

1.1 OECD Model Tax Convention

The OECD's Committee on Fiscal Affairs has agreed on new provisions for the exchange of information between national tax authorities.

The new arrangements are set out in a revised version of Article 26 of the OECD's Model Tax Convention, which covers the exchange of information on tax matters.

The key changes in Article 26 are as follows:

- A new paragraph has been added to prevent “domestic tax interest” requirements from restricting exchange of information. A domestic tax interest requirement refers to laws or practices that would prohibit one treaty partner from obtaining or exchanging information requested by another treaty partner unless the requested treaty partner had an interest in such information for its own tax purposes. The new paragraph clarifies that Contracting States should obtain and exchange information irrespective of whether they also need the information for their own tax purposes.
- A new paragraph has been added to ensure that ownership information and information held by banks, financial institutions, nominees, agents and fiduciaries can be exchanged. New paragraph 5 prevents bank secrecy from being used as a basis for refusing the exchange information.
- The confidentiality rules in Article 26 have been changed so as to permit disclosure of information to oversight authorities. This change reflects a growing trend in OECD countries. Oversight authorities are authorities that supervise tax administration and enforcement authorities as part of the general ad-

ministration of the government of a Contracting State.

These and other changes made to Article 26 and its Commentary are consistent with the 2002 Model Agreement on Exchange of Information in Tax Matters, which was developed jointly with a number of non-member economies committed to the principles of transparency and effective exchange of information

1.2 Switzerland - EU Taxation of Savings

On August 18, 2004, the Swiss Federal Council has opened the consultation procedure for the Draft Federal Law regarding the Taxation of Savings. The contemplated law mainly regulates the procedural aspects and the competent authorities within the Swiss Federal Tax Administration. Furthermore, it contains the sanctions and penal provisions for Swiss paying agents, which do not comply with the EU Taxation on Savings from July 1, 2005 onwards.

1.3 Switzerland – Reform of Withholding Tax Law

According to reliable sources within the Swiss Federal Tax Administration, the Swiss authorities are working on a proposal, which would tremendously improve the Swiss withholding tax rules. It is contemplated that Switzerland will establish the withholding rates under a

specific treaty by replacing the current refund procedure by a relief at source.

The new regime would be applicable in relation to all countries with which Switzerland has concluded a double tax treaty and should be available for qualifying dividends paid to corporate recipients. The new regulations will probably enter into force on July 1, 2005.

Since Switzerland introduced the withholding tax it applied a refund procedure with regard to the Swiss withholding taxes levied on payments to beneficiaries irrespective of the residence of the beneficiary, i.e. even for payments to Swiss residents. If the country where the beneficiary is resident of has concluded a double tax treaty with Switzerland and if all the conditions set forth in such treaty are fulfilled, the recipient may reclaim the withholding tax partially or in full, depending on the treaty. Currently, the rate of the withholding tax is 35% and is levied on dividend payments, bank interest, etc. Under the current rules here are numerous drawbacks of this refund procedure. The most pertinent may be summarized as follows:

- Even if withholding taxes may be fully or partially reclaimed, the refund can still lead to an administrative burden, as the taxpayers have to complete all necessary formalities related to the refund.
- If substantial amounts are involved, withholding taxes may also give rise to cash-flow problems since it may take at least a few weeks from the point in time when the withholding tax is remitted until the refund is credited. There is a speed up procedure available, but even then it may take up to 10 days until the refund is granted.
- The withholding tax deposited with the SFTA is non-interest bearing.
- The withholding tax has to be remitted in Swiss Francs, which may create f/x issues.

The main benefits of the new regulations for foreign investors in Switzerland would be:

- As no withholding tax has to be deposited with SFTA, no loss of interest and no f/x issues should arise.
- If substantial amounts are involved, no cash-flow problems should arise.
- The compliance work with regard to the net procedure is expected to be less burdensome and time consuming.
- Switzerland has concluded nearly 70 double tax treaties. The relief at source would apply in relation to all these countries.
- Generally, the exemption at source system will enhance Switzerland's position as a taxpayer-friendly place.

1.4 EU parent subsidiary directive

According to communication disseminated by Ernst & Young earlier, Switzerland will most probably benefit from the preferential EU Parent Subsidiary Directive on dividends and the EU Directive on intercompany interest and royalty payments from July 1, 2005 onwards.

It goes without saying that the tax benefits related to these two EU Directives will strengthen Switzerland's position as a business place.

1.5 Germany

BMF letter on new provisions for shareholder financing by borrowings (§ 8a KStG)

As already announced in our last Tax News, the Federal German Finance Ministry (BMF) has in the meantime published a BMF letter on outstanding implementing issues arising in the area of shareholder financing by borrowings. However, one issue which may have an unsuspected impact still remains unresolved: in Section 39, the

concept of the holding company may be interpreted so widely that it may also include foreign joint stock companies under certain circumstances to the extent that they are liable for tax in Germany. Such a liability may already exist if the foreign company receives dividends from the German national holding company or a disguised profit distribution takes place (limited tax liability). In such cases, a problem would arise from the fact that the "holding company privilege" would be lost at the level of the German national holding company. The German tax authority has promised a further BMF letter for the autumn of 2004. We await further developments.

Tax amnesty – further doubtful issues clarified

The tax amnesty has been in force since 1 January 2004. Unfortunately a number of matters of detail affecting current consulting practice remained open. To create further legal certainty in this regard, the German tax authority published supplementary information in a list of questions and answers on 20.7.2004. In all, the financial administration stated its position on twenty practical matters. You will find the full list of questions and answers at: www.steuernamnestie.ch. The question as to the treatment of foundations, trusts and *Anstalten* (establishments in Liechtenstein) for gift tax purposes remains unclear. We await the long announced "check list" by mid/end September 2004.

2. Corporate Taxes - Switzerland

2.1 Tax Risk Management

Introduction

In their daily activity, businesses find themselves increasingly confronted with tax risks, not least because of the complexity of this subject matter. A number of high profile cases show that these tax risks can have both drastic financial consequences and also an adverse impact on the reputation of a

business. The effective control and monitoring of tax risks from the corporate point of view (known as tax risk management), is therefore becoming an increasingly important task and area of responsibility for corporate decision-makers.

What are tax risks?

In general, a risk can be defined as an uncertainty which may have adverse consequences. In the tax area, tax risks are therefore uncertainties which can have negative consequences for the business in respect of the different kinds of tax. There are several sources of uncertainty which can be divided into risk categories. The uncertainties may affect all kinds of circumstances and transactions in the business which may be described as risk areas. The relationship between the risk categories and the risk areas ultimately shows the potential risks which may have negative tax implications.

To quantify, i.e. determine the amount of the tax risks defined in this way, we must assess firstly the probability of occurrence of the risk concerned and secondly the material nature of the potential negative effects. Based on such an assessment, the company must then decide which risks it is willing to accept and which must be dealt with and controlled through targeted tax risk management.

Risk categories

The various sources of uncertainty in tax matters can be divided into the risk categories of environmental, process and information risks.

In the area of **environmental risks**, in the tax field in particular, uncertainties are relevant in connection with the enactment of tax legislation and its interpretation by the tax authorities and the courts. Tax risks may arise here primarily from uncertainty surrounding the application of the laws to particular circumstances and from potential amendments to tax legislation or tax

practice. As the probability of the occurrence of such environmental risks cannot in principle be influenced, they are also referred to as external risks.

Tax risks of proceedings in tax matters arise in particular from uncertainties as to whether the different tax circumstances and transactions have been correctly handled within the business from the tax angle, for example, in the area of documentation or tax compliance. Tax risks may arise because the relevant circumstances (e.g. determination of a transfer price) have not been adequately documented and cannot therefore be applied for tax purposes. Similarly, the business may incur additional taxation because of the failure to complete tax returns correctly or the failure to appeal within the set deadlines. Then again, risks may be caused by human errors occurring because of a lack of knowledge, insufficient motivation or even the fraudulent conduct of managers and staff of the company. Finally, tax risks may be a consequence of failure to implement tax concepts effectively. For example, if “for reasons of practicality” an offshore company is effectively managed not on site but from Switzerland, the company concerned may then become liable for tax in Switzerland. That in turn can generate substantial extra tax payments.

Finally, there may be **information risks** when uncertainties exist over the way in which basic assumptions are to be treated for tax purposes. For example, if a shareholding interest has been valued on the basis of budget figures and on that basis the conclusion is reached that the shareholder can claim the holding company privilege, the uncertainty of the budget figures creates a risk that, when the real figures become known at a later date, the criteria to benefit from the holding company privilege will not be met. The result will be a higher tax burden.

Risk areas

As we have already indicated, the circumstances to which uncertainties may apply constitute the risk areas.

The **juridical group structure** of a business is a first significant tax risk area. There may be environmental risks if it is unclear whether a particular legal entity can in fact claim a special tax status. In the example already quoted of the place of effective administration of an offshore company, the juridical structure of the group is the risk area for the risk of proceedings referred to previously.

Transactions within the group are another category of risk areas. This category includes, for example, the widely discussed transfer price risk. This involves the impact of uncertainties, in particular in the area of documentation and application of the third party comparison principle to transactions within the group. But this category also extends to reorganisation within the group where there is uncertainty, e.g. surrounding the qualification as a tax-neutral process for tax purposes.

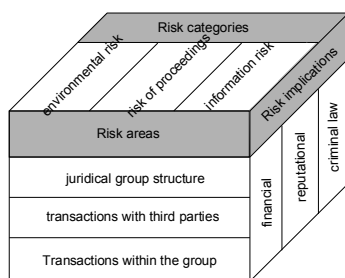
A third and final significant risk area is that of **transactions with third parties**. For instance, in the area of environmental risks, there may be uncertainties as to whether a particular service provided to a third party is or is not liable for value added tax. If it turns out later, e.g. following a court ruling, that value added tax is payable, the tax risk resides in the fact that value added tax may have to be subsequently paid with corresponding negative financial implications.

Impacts of risks

In addition to the determination and categorisation of the different tax risks, their impacts can be divided into several different groups. In the first place, materialising tax risks have financial implications on the company through higher taxes, costs incurred for tax proceedings or fines imposed. In addition, there is also nowadays an increasing risk of damage to the reputation of a business as major tax proceedings often attract widespread publicity in the me-

dia. Finally, implications in criminal law can also be envisaged as a consequence of sentences passed on the decision-makers of a company for tax evasion or personal enrichment; that too may in turn adversely affect the reputation of the business.

The following matrix diagram shows the relationship between risk categories and risk areas and illustrates the possible consequences (risk implications) if the individual risks do in fact materialise:



Conclusion

Based on the definition of the tax risk as an uncertainty which can have detrimental tax consequences for a business, the individual risks can be determined and structured with the aid of risk categories and risk areas. As part of a systematic risk analysis, the probability of occurrence of the risk and its importance must be assessed regularly. The model can and must in fact be applied to all types of taxation. On the basis of a risk assessment of this kind, companies must determine how to deal with existing tax risks, either by reducing the likelihood of their occurrence or by reducing the scale of the risk. One decisive consideration for tax risk management is that the risks must be regularly determined and the risk trend monitored.

2.2 Merger Law and real estate companies

The Swiss Federal Act on mergers, demergers, conversions and asset transfers took effect on 1 July 2004. This

statute, generally known as the Mergers Act, replaces the provisions embodied in the Swiss law of obligations on mergers and conversions and also closes significant loopholes. Economic operators therefore now benefit from up-to-date instruments which create legal certainty and transparency for restructuring operations.

The new law contains interesting provisions concerning the tax consequences of restructuring operations which are often described as a “quantum leap in Swiss corporate tax law”. This applies, in particular, to the facilities introduced for the transfer of businesses, participations and capital goods within groups of companies. Here, it should be noted that the Mergers Act came into force on 1 July 2004 in respect of the direct federal tax, while a three-year transitional period is allowed for the cantons. This aspect is important, in particular when restructuring operations take place.

What are the tax innovations and advantages from which real estate companies may benefit?

Under the existing law, the tax consequences of demergers (by split-off and divestment) of businesses owning real property or real estate companies were often the dog in the manger. Not uncommonly, the stringent tax limits prevented a corporate restructuring that made business sense, e.g. separation of the operation and ownership of the real properties within a group or the division of a portfolio into segments (residential, commercial etc). For real estate companies in particular, the operational requirement presented a problem for tax purposes. The tax neutrality of the division of real estate companies or companies owning property necessitated the transfer of complete parts of the business. The size and quality above which a property portfolio was classified as an operational business for tax law purposes was unclear and to some extent controversial. When the criteria for tax-neutral transfer existed, the five-year blocking period on disposals placed a serious limitation on the

flexibility of future portfolio management.

Operational business requirement and blocking period

Under the Mergers Act, the demerger of real estate companies is only possible on a tax-neutral basis if businesses or parts of businesses are transferred. The requirements of tax neutrality must still be satisfied, namely the continuing existence of a tax liability in Switzerland and the transfer at the taxable book values. These requirements are automatically satisfied by real estate companies. Legal certainty is created in particular by the explanations given by the Swiss Federal Tax Authority in its recently published Circular No. 5 on restructuring. This indicates the (cumulative) conditions under which holding and managing own real properties constitute a business (see text frame). This clarification was necessary. At cantonal level, the interpretation of the operational business requirement differs and is generally stringent, especially in respect of the real estate capital gains tax and the real estate transfer tax. It will be interesting to see how the cantons and local authorities approach the concept of an operational business defined by the Federal Tax Administration.

With the Mergers Act, the blocking period on disposals when companies are split up has been abandoned. That is welcome. The (future) conduct of the shareholders will not have any impact on profits taxes according to the intention of the legislator. However, the fact that tax neutrality does possibly not apply to subsequent transactions must be borne in mind. If, following a tax-neutral demerger of a real estate company or a business which owns real properties, the property division is sold, this second transaction may be treated as a transfer of economic ownership, regardless of the innovations introduced by the Mergers Act. The gains in value of the properties will therefore in general be liable for cantonal or local real

estate tax but not for direct federal tax in the event of the sale of the company.

Transfer of assets within the group

A possible remedy to the problem of the operational business requirement when real properties are transferred may be provided by the newly introduced legal institution of the transfer of assets. Under this system, operating capital assets may be transferred on a tax-neutral basis within domestic group member companies. The assets to be transferred (i.e. one or more real properties in the case of real estate companies) must qualify as capital investments necessary to the business from the point of view both of the transferring and of the acquiring company. To that extent, the asset transfer satisfies the requirement for the greatest possible flexibility within the group. Even if a blocking period has to be respected for the transfer of assets, in our view, this will become a new instrument for the structuring of real property portfolios. Real estate which is transferred in this way must remain the property of the receiving company for the next five years. In addition, the participation rights of the acquiring domestic company must not be detached from the group structure within the same period.

Real estate transfer tax: an obstacle to restructuring today – and tomorrow?

Up to know the real estate transfer tax has not been harmonised in Switzerland. It has many facets as is apparent in particular from the differing provisions on the basis of assessment or the rules on subjective and objective exceptions from tax liability. While a clear majority of the cantons have included corporate restructuring operations in the scope of objective exceptions from tax liability, in the cantons of Geneva, Ticino, Vaud and Valais they are still liable for tax in whole or in part. The bandwidth of the rates which extends from 1 to 3.3% underlines their importance. When real estate companies are restructured, a tax of this

kind is certainly liable to be a deal breaker.

Against that background, it is hardly surprising that public attention has been attracted increasingly in the recent past to the real estate transfer taxes and that the electors in Zurich voted in favour of the popular initiative for its abolition by a clear majority on 30 November 2003. A few weeks previously on 3 October 2003, the Swiss Federal Councils had taken the same route after lengthy debate with the adoption of the Mergers Act. The real estate transfer tax can no longer be levied anywhere in Switzerland when businesses are restructured.

The cantons have been allowed a five-year transitional period calculating from the date of entry into force of the Mergers Act for implementation. In addition, cost covering fees may still be levied; this means that a carefully thought out and planned approach remains necessary for the restructuring of real estate companies or businesses owning real properties.

The holding and administration of own real properties constitute a business if all of the following requirements are satisfied:

1. There must be a market presence or business properties must be rented to group member companies.
2. The business must employ or entrust at least one person with the management of the real properties (one full-time post for purely administrative tasks)
3. The rental income must amount to at least twenty times the habitual market cost of personnel employed for real property management.

2.3 Indirect partial liquidation

As a reaction to the Supreme Court ruling of 11 June 2004 (see our com-

mentary in the August 2004 Tax Alert), the Swiss Federal Tax Authority addressed a circular to the cantonal tax authorities on 8 September 2004. This cancelled the previous circular of 14 July 1997 on the “contribution of participations to a company controlled by the heirs.” Such transactions will no longer be assessed in future from the angle of what is referred to as the “transposition practice” but rather from that of the circumstance of indirect partial liquidation. For a taxable income rather than a tax-free capital gain to be deemed to exist, the following criteria must all be satisfied:

1. The shares in the company must be transferred to the business assets of a purchaser to whom the book value principle applies (e.g. a holding company)
2. Resources must be withdrawn from the company which is taken over or at least a procedure for their withdrawal must be put in hand; that will be the case if the purchasing company finances the purchase price by borrowing. Future profit distributions also represent a loss of assets for the purchased company; the previous practice of limiting distributions within five years of the sale no longer applies.
3. The seller and the buyer must have put in hand the withdrawal of resources by their joint action.

On that basis, the ESTV insists that all outstanding and new cases which are to be examined to determine the existence of indirect partial liquidation, must be notified to it by the cantonal tax assessment authorities. The publication of an ESTV circular on this matter is planned.

The new ruling of the Swiss Supreme Court and the circular will make arrangements to settle the succession to ownership of small and medium-sized business considerably more difficult. Purchasers who do not wish to make borrowings to finance the purchase price must surely be few and far be-

tween! To repay the purchase price debt the purchaser will as a rule be dependent on appropriate distributions by the purchased company. That route is as a rule blocked or at least complicated by the new circular. That being so, careful planning of the tax aspects of succession has become more important than ever before.

3. Income Taxes – Switzerland

Breakthrough for the new salary statement?

As a consequence of the adoption of the Tax Harmonisation Act (StHG) and the Federal Act on the Direct Federal Tax (DBG), Swiss tax law has undergone a major change in recent years. This change also included the salary statement, which is the most important document as far as the tax assessment procedure for individuals is concerned.

Originally, the definitive introduction of the new forms was scheduled for 2005. But as the negotiations with the economic associations and have not yet been fully completed, the executive of the Swiss Tax Conference (SSK) decided to defer the launch for one more year. According to the present timetable, only the new forms may be used with effect from the 2006 income year. A final decision on this matter is due to be taken by the end of this month.

The replacement of the old salary statement is designed to modernise, simplify and rationalise the salary statement. At a meeting of the executive of the Swiss Tax Conference in 2001, it was therefore decided to conduct a wide-ranging consultation or information procedure for employers, insurers or their associations and software companies. In addition, a committee was entrusted with the task of examining the new salary statement and the accompanying regulations for their practical feasibility.

As things stand at present, the declaration of effective refunds of expenses is in principle maintained but at the same time simplified by comparison with the rules in force at present. Overall, the practical feasibility and user-friendliness have even been improved.

In addition to the creation of an StHG-compliant salary statement, which will be standardised throughout Switzerland and adjusted to the one year post numerando taxation system, the new salary statement is also being harmonised with the other areas of tax law.

Addition principle

One significant change concerns the salary statement form which was previously based on the net principle but for which the addition principle is now used, i.e. all gross payments are to be declared. When the addition principle is applied, the tax authorities require all the payments made to the employee to be stated, regardless of a possible deductibility in the personal tax return. The intention is to show on the form a more transparent and complete declaration of taxable income, including all ancillary payments and expense refunds. Many employers experience difficulties in making out the old salary statements to show ancillary payments correctly. The declaration of ancillary payments, e.g. use of a company car, is to be clarified, simplified and unified. But the provision of benefits in kind, e.g. board and lodging (especially in the hotel and catering trades), the payment of disbursements by the employer instead of the employee, e.g. employer's contributions to an employee's insurance premiums (health insurance fund contributions), sale of goods or services of the employer to the employee at a preferential price, e.g. granting rebates on insurance premiums or low interest loans and other ancillary benefits which are not paid out as an actual cash salary, including flat-rate compensation for entertainment expenses, must all be shown.

Refund of expenses

Under the existing rules, an employer was already able to arrange for an expense regulation to be approved by the cantonal tax authorities. This brought a considerable simplification as the effective expenses no longer had to be listed on the salary statement. The new provisions also provide for the approval of expense regulations. This brings administrative simplifications and certainty for the employer. An expense regulation will be approved by the particular canton in which the company has its headquarters. An expense regulation approved in that way is currently recognised by all the German-speaking cantons. However, efforts are under way to achieve a situation following the introduction of the new salary statement in which an expense regulation approved by one canton will be acknowledged throughout Switzerland.

Procedure if the new salary statement is not introduced

If the new salary statement is not introduced, the tax authorities will work on the basis of the old instructions dating back to 1995 which will continue to apply.

Even under the old instructions which remain valid today, the employer is required to make all indications on the principle of truthfulness and clarity. The employer must issue a salary statement to his employees showing the payments made to them. The gross salary declared must include all payments which are in the nature of salary components.

Need for immediate action today

The salary statement is the most important document for the employee's tax declaration procedure. Preparatory work should therefore be done in good time in order to ensure that employees receive timely information.

However, sufficient resources will have to be made available for the conversion work. This includes conversion of the

payroll accounting, contacts with the software manufacturer and software consultant regarding the conversion work and timing, provision of a budget for costs incurred etc.

But the available time should also be used to review and, where necessary, adjust internal processes and perhaps abolish certain payments because of the extra administrative work involved. Instead, such payments should be included in the basic salary in the next pay negotiation round. You should examine whether you are confronted with any risks because of incorrect declarations made on the existing salary statements which should already be clarified at this stage. A review of the treatment of expenses and the preparation of an expense regulation which should be approved by the tax authority of the canton in which the company has its headquarters are also advisable. You would be well-advised to make use of the remaining time to ensure that you are ready for the launch of the new salary statement in 2006.

4. VAT

Tax exemption for management fees in jeopardy

Management services qualify on the principle of the place of provision, i.e. the service is deemed to have been provided at the place where the recipient of the service has the registered office for his economic activity or a place of business for which the service is provided.

In a judgement of 31 March 2004, the Swiss Supreme Court definitively ruled that documentary evidence of tax exemption in respect of management fees charged in a different country does not exist if the description of the services is not given in sufficient detail on the invoices. Notwithstanding the fact that an appropriate contract exists, in which the particular services are specified, the proof of eligibility for tax exemption is

deemed to be insufficient if the invoices do not make a specific reference to that contract. A further point must also be noted: in so far as this contract also includes services which are deemed to have been used or employed in Switzerland and are therefore liable for tax even if the recipient of the service is resident abroad, these two amounts of service turnover, which are to be treated differently for tax purposes, must be clearly separated both in the contract and in the text and amounts stated on the invoice.

The judgement refers to an appeal dating back to the time before the adoption of the value added tax ordinance. The special provisions for management fees were set out in detail in the then Information Bulletin No. 13 in its edition of January 1997. No new conditions have been introduced with the currently valid Information Bulletin No. 06 on the value added tax act.

The requirements of the ESTV (Federal Tax Authority) in respect of the exemption from tax liability for such management fees charged abroad are of a purely formalistic nature. A service which is exempt from tax can therefore only be deemed to have been provided if the invoices show a sufficiently detailed description of the services. If the service is simply identified by the reference "management fees", although a contract stipulating the detailed services exists, the invoice must make reference to that contract in every case. Otherwise the tax will be levied subsequently if a tax audit takes place.

Notification procedure: amendment of ESTV information bulletin No. 11

On the occasion of the entry into force of the Mergers Act on 1 July 2004, the ESTV has already announced a first adjustment of Information Bulletin No. 11 "Notification procedure" in its practical notice of 25 June 2004. The third paragraph of section 2.5 has been replaced by a new section 5.2 with effect from 1 July 2004. This new section states that the notification procedure

will as a matter of principle not be applied if a company effects a change in its legal form for which provision is made in the Mergers Act. This is because there is no change of tax subject. Consequently no new value added tax number is issued either. The change must be notified to the ESTV within 30 days, enclosing the relevant extract from the commercial register.

The ESTV also put in hand work on the replacement of the entire Information Bulletin No. 11 by a revised version following the entry into force of the new Mergers Act. The draft text has been discussed in the newly created consultative body (which consists of the Head of the Value Added Tax Division as the Chairman and 12 permanent members of organizations representing science, the economy, tax practitioners and the Swiss Federal administration). The final version is due to be published on 24 September 2004 at <http://www.estv.admin.ch/data/mwst/d/mwstg/druckpdf/545-11-d-neu.pdf> (valid with effect from 1 July 2004). This information bulletin includes a new provision extending the transitional period for suppliers' invoices which are still made out in the name of the previous company from 60 days to 6 months (Section 3.2.4)

In connection with the notification procedure, we also wish to refer our readers to the ruling handed down by the Swiss Federal Tax Appeals Commission on 12 August 2003. This points out in unmistakable terms that, on the occasion of the transfer of entire or partial assets, the recipient of the benefits (the acquiring company) has no entitlement to deduct input tax to the extent that the notification procedure should have been applied. As a result, the acquiring company will be deprived of the input tax deduction in the event of a tax audit if the transferring company has passed the tax on to the acquiring company although the tax liability should in fact have been discharged by notifying the taxable turnover. The company which takes over all or part of the assets which

were transferred wrongly without applying the notification procedure, therefore runs a risk of VAT liability (7.6%) on the value of the transfer. This risk can be avoided if the applicability of the notification procedure is clarified in a binding manner before the transaction goes ahead.

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