

Update

Newsflash February 2019

Significant Swiss WHT improvements for international debt financings

The Swiss Federal Tax Administration has announced on 5 February 2019 a new practice that significantly improves the ability of corporate groups to raise debt abroad and to use such debt in Switzerland.

It is now possible to raise debt abroad and to "flow back" such funds to Switzerland in an amount aggregate to the equity of all non-Swiss subsidiaries (equity exception) and all intragroup funding granted to non-Swiss group members (intragroup funding exception).

Current regime

To date, Swiss groups looking to tap the international debt capital or bank debt markets face a Swiss withholding tax (WHT) issue where the issuer or borrower is a non-Swiss group member and where the structure requires guarantee support by the Swiss parent company.

Under the current regime, Swiss WHT (at a rate of 35%) is applicable on the interest payments, unless:

- (i) the number of non-bank creditors is limited to a maximum of 10 (which is typically feasible in bank debt transactions but typically not feasible in debt capital market transactions);
- (ii) the proceeds / funds raised are used outside of Switzerland (so-called no flowback); or
- (iii) if there is flowback into Switzerland, the maximum flowback is capped at the equity amount of the non-Swiss issuer / borrower.

This current WHT regime represents a significant impediment to international debt financings of

Swiss groups. To illustrate the issue, think of a Swiss group looking to issue a Eurobond through a non-Swiss SPV for the purposes of funding an acquisition by a Swiss group member.

New regime

On 5 February 2019, the Swiss Federal Tax Administration has published a significant change to this regime. The new regime significantly increases the ability of Swiss groups to raise funds abroad and to use such funds in Switzerland.

The new rules provide for two exceptions:

Equity exception

The first exception is the **equity exception**. Pursuant to this exception, it is now possible to flow back to Switzerland (e.g. by means of intragroup loans) funds raised by non-Swiss group members and benefitting from Swiss guarantee support in an amount up to the aggregate cumulative equity of all non-Swiss subsidiaries of the group (note that it is the cumulative equity of all non-Swiss subsidiaries, not just the equity of the

non-Swiss issuer / borrower as is the case under the current regime).

By means of illustration, if a Swiss group has three non-Swiss subsidiaries and the cumulative equity of such subsidiaries is CHF 1,000 million, it is now possible to flow back to Switzerland an amount of up to CHF 1,000 million without triggering Swiss WHT consequences.

Intragroup funding exception

The second exception is the **intragroup funding exception**. Pursuant to this exception, it is now possible to flow back to Switzerland (e.g. by means of intragroup loans) funds raised by non-Swiss group members and benefitting from Swiss guarantee support in an amount of up to the aggregate amount of all intragroup loans granted by Swiss group members to non-Swiss group members.

By means of illustration, if the aggregate amount of all intragroup loans granted by Swiss group members to non-Swiss group members is CHF 500 million, it is now possible to flow back to Switzerland an amount of up to CHF 500 million without triggering Swiss WHT consequences.

Combination of exceptions

The Swiss Federal Tax Administration has clarified in its announcement that the equity exception and the intragroup funding exception can be combined.

Thus, by means of illustration and with reference to the examples above, if the equity exception permits a flowback of CHF 1,000 million and the intragroup funding exception permits a flowback of CHF 500 million, it is now possible to flow back to Switzerland a total amount of up to CHF 1,500 million without triggering Swiss WHT consequences.

Tax ruling requirement

The Swiss Federal Tax Administration has specifically stated in its announcement that a tax ruling must be sought from the Swiss Federal Tax Administration where a group wants to benefit from the new exceptions.

The announcement sets out certain more formal requirements applicable to the exceptions and to respective tax ruling requests.

Please contact us for any questions.

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