ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

ASBZ ADVOGADOS
BAE, KIM AND LEE LLC
BPV HÜGEL RECHTSANWÄLTE GMBH
CREEL, GARCÍA-CUÉLLAR, AIZA Y ENRÍQUEZ, SC
CUATRECASAS
DDTC CONSULTING
GORRISSEN FEDERSPIEL
KPMG LAW ADVOKATFIRMA AS
LEE HISHAMMUDDIN ALLEN & GLEDHILL
LENZ & STAEHELIN
LOYENS & LOEFF
MAISTO E ASSOCIATI
MAPLES AND CALDER
MARVAL, O’FARRELL MAIRAL
OLD SOUTH BRITISH CHAMBERS
STEWARTS
STREAMSOWERS & KÖHN
THE CHAMBERS OF MIHIR NANIWADEKAR
TMI ASSOCIATES
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VASIL KISIL & PARTNERS
WASELIUS & WIST

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It is increasingly common for tax practitioners to be involved in disputes that span multiple jurisdictions. We operate in a global economy. Supply chains cross continents, and the increasing role of technology accelerates the pace at which economic activity becomes divorced from the structures intended to tax it. The pace of economic and technological change potentially increases the gap between the reality of commerce and taxation.

Although supranational agencies such as the European Commission and OECD work hard to keep pace with change, there is an inevitable lag between intention and action. Of late we have seen individual countries start to take unilateral actions, with digital taxation being a prime example. In coming years, a combination of economic developments and unilateral actions by individual countries is likely to further emphasise the importance of double tax treaties and the OECD multilateral instrument.

As the chapters of this book were being written, there were already important changes taking place in the political landscape in the United States and Europe, and in the global economy, that may affect international cooperation on tax and trade.

While tax practitioners must understand their own jurisdiction in detail, it is more important than ever to understand the global environment in which clients operate. It comes as no surprise that the authors of many chapters have identified international tax issues and offshore structures as areas of key focus for their own domestic tax authorities.

Regardless of whether tax authorities increase in cooperation or increase in competition, one thing is certain: they will not stand still. Tax, and particularly the international approach to tax, is a constantly evolving issue.

The purpose of this book is to provide insight into the issues that give rise to tax disputes in different jurisdictions, the procedures for resolving those disputes, and the powers and approach of local tax authorities. It is hoped that it will provide valuable insight into the process, timescale and cost of resolving complex difficulties when they arise across more than one jurisdiction.

We are lucky to have contributions from many leading and impressive tax practitioners across a wide range of jurisdictions. Each provides an up-to-date insight into dealing with contentious tax issues in their jurisdiction. I have enjoyed and learned from reading their contributions and I hope you will do, too.

I would like to thank my colleagues Victor Cramer, Lee Ellis and Cristiana Bulbuc for their valuable assistance in compiling this edition.

David Pickstone
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February 2021
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I INTRODUCTION

Switzerland is a federal state. It therefore follows that the Swiss tax dispute environment reflects the allocation rules of the fiscal powers between the federal power, referred to as the Confederation and the federal states called cantons. Switzerland has 26 cantons and approximately 2,200 communes. Taxes are levied on three different levels: federal, cantonal and communal. The cantons are sovereign insofar as their sovereignty is not limited by the Federal Constitution. This means that each canton independently generates income by levying taxes, unless the Federal Constitution gives the Confederation the exclusive right to levy a particular type of tax. At the cantonal and communal levels, the tax laws differ depending on the canton and the commune. The cantons are mainly responsible for the assessment, collection and general administration of their own taxes (e.g., income and equity taxes, inheritance and gift taxes, real estate capital gains and real estate transfer taxes). They also support the administration of federal direct taxes (federal income taxes in particular). Owing to the fact that the cantons still have a lot of independence, this can result in significant differences from one canton to another. The communes may only levy the taxes that their canton’s constitution empowers them to levy.

With regard to the resolution of tax disputes, Switzerland has a well-established and efficient practice. When confronted with an unlawful tax assessment, the taxpayer generally is not obliged to immediately challenge said assessment in court. Rather, the taxpayer may turn to the tax authority that issued the tax assessment decision being challenged, to compel it to issue a new decision. This procedure consists of a formal complaint and allows numerous questions to be resolved in a quick and efficient way at little cost. Tax authorities then issue a decision on the formal complaint. This procedure thus often eliminates the need for court proceedings and generally takes only a few months. However, for complicated issues, this procedure offers limited solutions. In intricate cases, tax authorities usually prefer to wait for a binding judgment made by a higher independent body (i.e., a court). It is very common for taxpayers to exercise their right to challenge tax assessment decisions from tax authorities.

If the taxpayer does not agree with the decision, they may start judicial proceedings before the competent administrative court. From an organisational point of view, administrative courts are fully independent from tax authorities. Judicial proceedings may take between one and two years before judgment, generally depending on the workload of the courts and

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the complexity of the matter. There are two levels of cantonal administrative courts (i.e., the lower administrative court and the second instance administrative court) before appealing to the Federal Supreme Court.

Contrary to the formal complaint procedure before tax authorities, proceedings before the lower administrative court, the second instance court and the Federal Supreme Court are subject to court fees depending on the amount in dispute. Those fees are only to be borne by the taxpayer if they lose. If the taxpayer partially wins, they will have to pay part of the court fees. To the extent that the taxpayer wins in court, their lawyer's or representative’s costs may be partially borne by the state.

II COMMENCING DISPUTES

i Initiation of the tax assessment procedure

Each individual subject to tax in Switzerland needs to file a tax return each year in relation to income and wealth taxes on a self-assessment basis normally within three months of the end of the tax period, corresponding to the calendar year. Most cantons allow at least one deadline extension. The same applies to legal entities subject to corporate tax in Switzerland.

Sole proprietorships and partnerships are considered transparent for income tax purposes; income is attributed to each partner and is apportioned according to the investment in the partnership. Each partner is responsible for filing their own personal tax return and tax is paid at personal income tax rates. Wealth tax is moreover paid on the company’s assets.

Regarding withholding tax, stamp tax and value added tax (VAT), the principle of ‘spontaneous taxation’ applies, meaning that the taxpayer must determine on their own the amount of tax due, declare it and pay said amount to tax authorities.

In the field of taxes related to possession (e.g., cars, boats, dogs) and property transfer tax, taxation takes place by way of an administrative decision generally following the announcement from the taxpayer. The latter then has to pay the tax.

ii Issuance of the tax assessment decision

After the filing of the tax return, it is reviewed by the responsible tax commissioner and an assessment decision is issued by the tax authority. The cantonal tax authorities can assess cantonal income taxes in respect of individuals and legal entities, as well as direct federal tax, which includes income tax. Other taxes (e.g., withholding tax, stamp tax and VAT) are assessed by the Federal Tax Administration only.

The assessment decision determines the tax base, the applicable tax rate and the tax amount. This decision is an administrative decision, notified in writing to the taxpayer and jointly to the spouses. In the absence of an objection, it constitutes a final binding decision.

In the presence of indicators showing that the tax return is not accurate, tax authorities may deviate from it after investigation. In this regard, the taxpayer has additional duties relating to their general duty to collaborate with tax authorities for ensuring that the taxation is complete and accurate. On request, they must provide additional information, documents, accounting documents, etc.

If the taxpayer does not comply with their obligation to file a tax return or if the taxable elements cannot be sufficiently determined, the tax authority is entitled to assess the tax due at its own discretion with regard to the factual elements at its disposal and empirical figures.
iii Initiation of tax disputes
Tax disputes usually start by way of an appeal by the taxpayer against a tax assessment decision rendered by a tax authority. At this early stage, the taxpayer has to first file a formal complaint before the tax authority that made the assessment decision. In the fields of withholding tax, stamp tax and VAT, disputes usually arise as a result of a tax audit conducted by the Federal Tax Administration.

iv Time limits
As a general rule, the right to tax expires five years after the end of the accounting period. This time period is suspended during appeal proceedings. A new five-year time limit starts every time the competent authority takes measures aiming at determining or getting the payment of the tax due and informs the taxpayer. In general, there is an absolute time limit of 15 years.

v Voluntary disclosure
An important element of Swiss tax disputes is the voluntary disclosure system. Under Swiss tax law, taxpayers are offered a voluntary disclosure programme for undeclared assets and income, which are subject to taxation in Switzerland. This programme is also available to heirs in the case of inheritance.

For both voluntary disclosure in inheritance cases and ordinary voluntary disclosure, there is no criminal prosecution (no penalties). The taxpayer thus only has to pay the taxes due and default interests for the past 10 years or the past three years before the decedent’s death.

To benefit from the voluntary disclosure programme, the application must be filed for the first time in the taxpayer’s lifetime and be deemed voluntary. The taxpayer has to disclose all relevant information of the last 10 years and has to cooperate with tax authorities. Heirs only need to regularise the last three years before the testator passed away. The taxpayer must endeavour to eventually clear the total tax burden and act proactively in case of financial difficulties.

The duration of the procedure depends on the canton involved and mainly on the complexity of the case.

As of 30 September 2018, disclosures relating to assets held in jurisdictions with which Switzerland has an automatic exchange of information in place are no longer regarded as being voluntary and may not benefit from the voluntary disclosure programme anymore. Voluntary disclosures remain possible with respect to assets that are not covered by the automatic exchange of information.

vi Revision
In cases where the taxpayer was not aware of materially incorrect facts taken into account by the tax authority during the assessment or the audit, they may claim that the authorities have made an error of assessment based on the incorrect facts (petition for revision). Said petition for revision is only considered if important new facts or evidence are discovered and could not have been known during the ordinary proceedings, if the tax authority failed to consider important facts that were or should have been known, in the case of a significant violation of procedural principles, or if a crime or criminal offence influenced the tax assessment or decision.
vii  Release of information

According to the Federal Constitution, all taxpayers, within a certain time and factual limits, have the right to access their tax files. This may be a useful tool for taxpayers.

III  THE COURTS AND TRIBUNALS

i  Formal complaint with the tax authority

When the taxpayer objects to the assessment decision, they may file a formal complaint to the same tax authority that issued the decision, within 30 days from notification. The formal complaint procedure is an official appeal procedure that compels the tax authority to issue a new decision.

This procedure is at the taxpayer’s disposal regarding decisions issued in the fields of income tax (corporate income tax), wealth tax (capital tax), withholding tax, stamp tax and VAT for individuals as well as legal entities.

As to the form of the formal complaint, it must be filed in writing. Regarding the content, the complaint does not need, in principle, to be substantially motivated in regard to federal income tax. The taxpayer only has to express their unquestionable disagreement with the assessment decision. However, a formal complaint against an assessment decision made at the tax authority’s own discretion must be well motivated. In that case, the taxpayer has to demonstrate that the assessment decision is obviously inaccurate. For the taxes levied by the Federal Tax Administration, the formal requirements are stricter.

If the formal requirements are met, the tax authority has to re-examine the tax assessment decision and may either modify in whole or in part the decision or reject the taxpayer’s formal complaint.

ii  Appeal before a first instance court (cantonal appeal commission)

As a preliminary remark, the proper delimitation of taxation remedies is rather complex as it depends on the type of tax in question, the jurisdiction of the tax authority and the precise characterisation of the contested decision. Moreover, owing to the growing complexity of tax law, various specialised commissions of appeal have been created, both at the cantonal and federal levels.

An appeal before the cantonal appeal commission is open for decisions rendered in direct tax matters. In Geneva, the first instance administrative court is the competent court and is composed of one judge who acts as president and two other judges, specialised in tax matters.

As for formal complaints, the appeal must contain a presentation of the facts, evidence and conclusions. The deadline to appeal is 30 days from notification of the contested decision on formal complaint. The appeal can be filed by either the tax authority or the taxpayer. The court’s decision on appeal must be substantiated and communicated in writing to the appellant and to the authorities participating in the proceedings. Contrary to the formal complaint procedure, appealing before a cantonal appeal commission is not free of charge.
iii  Appeal before the second instance cantonal court
A decision of a first instance court can be appealed before a second instance cantonal court within 30 days of notification of the first instance court’s decision. The appeal can also be filed either by the tax authority or the taxpayer.

The procedural principles are the same as those applying before the first instance court.

iv  Appeal before the Federal Administrative Court
The Federal Administrative Court is the ordinary administrative court of the Swiss Confederation. Its main role is to examine the legality of decisions in matters falling under the authority of the Federal Administration. Lower instances are mainly the federal departments and subordinate federal offices.

The Federal Administrative Court hears appeals against decisions from federal authorities, in the fields of withholding tax, stamp tax and VAT in particular. Submissions should be made in an official language of Switzerland (French, German or Italian). Its judgments may be appealed before the Federal Supreme Court.

Generally speaking, fees are charged for proceedings before the Federal Administrative Court. Procedural costs are usually paid by the unsuccessful party. For pecuniary disputes, they may not exceed 50,000 Swiss francs.

v  Appeal before the Federal Supreme Court (Second Public Law Division)
If the taxpayer considers that the final decision of the second instance cantonal court or of the Federal Administrative Court violates their rights, they may file an appeal before the Federal Supreme Court. This appeal must be filed within 30 days of notification of said contested decision.

The Federal Supreme Court is the highest judicial authority within the federal state. It issues final decisions in tax matters.

The role of the Federal Supreme Court differs considerably from the cantonal and federal courts of first instance. This court does not re-establish the facts of the case. These facts may only be corrected by the Federal Supreme Court if it finds that they have been incorrectly established in a flagrant manner by the lower court, or that they have been based on a violation of law. This means that the Federal Supreme Court mainly takes its decisions applying the law on facts already determined.

In general, the Federal Supreme Court renders its rulings in the language of the decision being challenged.

IV  PENALTIES AND REMEDIES

Criminal penalties
As a preliminary remark, it should be underlined that regarding direct taxes, the fact that the taxpayer seeks to save taxes is not punishable.

In Swiss tax law, offences and sanctions are designed as follows.

Negligent failure to carry out procedural duties refers to situations, for example, where the taxpayer fails to file a tax return or does not comply with a duty to provide information.
Regarding the sanction, for income and equity taxes, the penalty is limited to 1,000 Swiss francs (or 10,000 Swiss francs for more serious cases or in the event of recurrence). For other types of taxes, the limit differs.

The unlawful reduction of the tax due may be penalised on two main grounds. On the one hand, tax evasion (i.e., where the taxpayer with intent or negligently omits certain items in their tax return, or generally causes a final assessment to be incomplete) belongs to the lowest category of criminal offences and is only subject to a fine. The fine may vary from one-third to three times the amount of tax evaded, with a statute of limitation of 10 years.

Regarding attempted tax evasion, the fine amounts to two-thirds of the amount determined for complete tax evasion. The statute of limitations is six years.

On the other hand, tax fraud is a qualified offence that requires the use of fraudulent documents (e.g., a balance sheet not showing the correct assets and liabilities). Inexact salary certificates are considered a more serious criminal offence. Indeed, the maximal penalty for this offence is imprisonment up to three years or a fine of a maximum of 10,000 Swiss francs. The statute of limitations in cases of tax fraud is 15 years.

V TAX CLAIMS

i Recovering overpaid tax

Regarding income tax, in the situation where the taxpayer paid too many instalments, meaning that the amount of tax actually due is lower than the amount provisionally paid, the overpayment is refunded. This procedure occurs automatically. Overpaid taxes may also, upon request, be set off against other liabilities due to the tax authority. For federal income tax, the refund claim can be made up to five years after the year when the overpayment was made. In Geneva, however, the limitation period starts from the moment when the taxpayer becomes aware of the overpayment. In any case, the overpaid amounts bear interest in favour of the taxpayer.

ii Challenging administrative decisions

Administrative decisions may be challenged on the grounds that they are unlawful, by lodging a formal complaint or an appeal (see Section II). This would also be the case where administrative decisions would be contrary to legitimate expectation or to the Federal Constitution. In specific cases, the unlawfulness may also result from the taxpayer in question being discriminated against in relation to another taxpayer.

---

iii  Claimants and related parties

Generally speaking, the rule is that only the taxpayer to whom the tax assessment has been noticed is entitled to bring a tax claim against the authorities. Depending on the case and the circumstances, other persons or entities may have the right to lodge appeal (e.g., another tax authority in inter-cantonal double taxation cases, legal representative, heirs, management of the bankrupt’s assets). With regard to direct income tax, it should be underlined that the competent cantonal tax authority, as well as the Federal Tax Administration, has the right to lodge appeals against tax assessment decisions, without prior duty to lodge a formal complaint.

Regarding VAT, entities having their seat or a permanent establishment on Swiss territory and that are united under a single direction may apply to be treated as a single taxable person (tax group). Entities that do not operate a business as well as individuals may be part of a group.\textsuperscript{10} In the case of such tax group, the group representative lodges the VAT return consolidating the VAT accounting of each group entities. This entity will therefore be the addressee of the tax assessment decision. All entities are, however, jointly responsible for the tax due.\textsuperscript{11}

With regard to withholding tax, the liable person is not the same as the one that has a right, under Swiss law or treaty law, to a partial or full refund of the withholding tax. Any person applying for a partial or a full refund has the right to lodge a formal complaint against the authorities.

In the field of tax at source, a formal complaint may be lodged by any interested person, meaning the taxpayer and the debtor of the taxable benefit.

VI  COSTS

As a general rule, each party bears their own costs. The taxpayer may, however, recover from the state part of the costs in case of success in front of the court. Even in cases involving substantial costs, the taxpayer will only recover a small part of them.

Regarding the procedural costs, they shall be partially or fully borne by the losing party. Nevertheless, these costs may also be borne by the successful appellant if their behaviour caused or significantly delayed the investigation. Moreover, all or part of the costs incurred because of inquiry measures may be charged to the taxpayer or any other person who is required to provide information, in the situation where these inquiry measures have been made necessary by a breach of procedural duties.

VII  ALTERNATIVE DISPUTE RESOLUTION

i  Tax ruling procedure

Given the overall complexity of taxation in Switzerland, taxpayers have an interest in discussing the more complex cases with the tax authorities at an early stage, prior to the implementations of any actions. Prospective taxpayers, such as international corporations considering moving to Switzerland, can obtain confirmation of their future taxation with a tax ruling. The same is true for individuals.

\textsuperscript{10} Article 13 of the Federal Act on Value Added Tax of 12 June 2009.
\textsuperscript{11} Article 15 of the Federal Act on Value Added Tax of 12 June 2009.
Tax rulings are commonly used in Swiss tax practice, although the law does not expressly refer to rulings. A tax ruling does not provide for a more preferential taxation than the applicable law does. It constitutes a quick and efficient way to provide for clarity in readiness for taxation. To obtain a ruling, the taxpayer has to disclose all relevant information, usually in the form of a letter.

As confirmed by the Federal Supreme Court, cantonal tax authorities are the competent authorities to issue tax rulings. In practice, however, the cantonal authorities often consult the Federal Tax Administration with regard to direct taxes. If the competent tax authority agrees with the taxpayer, the ruling request is sent back to the taxpayer with the stamp of the authority, which provides the taxpayer with confirmation from the state on the tax treatment of a transaction or a situation. Tax rulings are not public.

Regarding the binding effect of such rulings, the taxpayer is protected by the constitutional principle of good faith insofar as they rely on the information received by the competent tax authority. Swiss case law also especially emphasises that the taxpayer may not diverge from the facts stated in the ruling.

There is no legal entitlement for a taxpayer to obtain a binding ruling, even though tax authorities are most of the time willing to deal with ruling requests. This means that a denial or a refusal of a ruling request cannot be contested by taxpayers.

Finally, it is worth mentioning that rulings pertaining to withholding tax are to be obtained from the Federal Tax Administration, which is solely competent in this particular field.

ii Alternative dispute resolution means

With regard to alternative dispute resolution means, double taxation treaties concluded by Switzerland usually refer to mutual agreement procedure. Such a procedure also constitutes a minimum standard under the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI), signed by Switzerland on 7 June 2017. It may be initiated to eliminate double taxation that has occurred in violation of the treaty. In this context, advance pricing agreements are a specific kind of mutual agreement procedure in the area of transfer pricing.

This type of procedure is independent from Swiss domestic law procedures. Thus, the time limits provided for by domestic law have no influence on the mutual agreement procedure and vice versa. In particular, the 30-day deadline to file a claim against a tax assessment decision is not suspended by a request for mutual agreement procedure. To protect their rights according to Swiss tax law, the taxpayer will generally file a complaint against the tax authority, which will be suspended during the mutual agreement procedure.

Depending on various conditions, recently revised double taxation treaties also provide for arbitration if the taxpayer requests the opening of an arbitration procedure, generally in transfer pricing cases. Furthermore, the MLI introduces more detailed arbitration provisions to existing treaties between Switzerland and countries that have also opted in for these provisions.

VIII ANTI-AVOIDANCE

In Switzerland, general anti-avoidance rules are not contained in a specific act. They actually take different forms.
i General tax avoidance theory
Through the years, the Swiss Federal Supreme Court has developed a general principle of abuse of law or tax avoidance, applicable to all Swiss taxes. In accordance with this principle, applied by all Swiss courts and tax authorities, in certain situations, tax authorities have the right to tax a taxpayer's structure based on its economic substance, rather than its legal structure. According to case law, there is tax avoidance if: (1) the taxpayer's legal structure is unusual, inappropriate or inadequate to its economic purpose; (2) tax considerations are deemed to be the only motive for the transaction; and (3) the transaction effectively leads to significant tax savings to the extent that it would be accepted by tax authorities.

At the international level, the minimum standards agreed upon in the Base Erosion and Profit Shifting (BEPS) project by Switzerland include the principal purpose test (PPT). This serves to prevent treaty abuse by denying benefits under an agreement if obtaining that benefit was one of the principal purposes of an arrangement or transaction that resulted in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the agreement.

ii Transfer pricing
Even though Switzerland does not have a formal transfer pricing legislation, all related-party transactions with Swiss entities must respect the arm's-length principle. Generally speaking, Swiss tax authorities follow the OECD transfer pricing guidelines. Where intra-group transactions are not at arm's length, a hidden profit distribution is assumed and taxable income is adjusted.12 The arm's-length principle is also applicable in choosing the method of determination of mark-ups.

iii Thin capitalisation
In Switzerland, the thin capitalisation rules are embodied in a circular letter issued by the Federal Tax Administration.13 This circular letter sets out safe harbour rules that require a minimum equity ratio for each asset class. Any excess amount of debt is qualified as dividend subject to withholding tax and interests paid for excessive debt are not deductible.14

iv Controlled foreign companies (CFCs)
There is no CFC regime in Switzerland.

IX DOUBLE TAXATION TREATIES
Generally speaking, Switzerland’s tax treaty network is undergoing extensive renewal in accordance with the Organisation for Economic Co-operation and Development (OECD) standards, particularly so with the entry into force of the MLI on 1 December 2019. Switzerland implements the minimum standards agreed upon the BEPS project through an amending view. This instrument helps to amend efficiently double taxation agreements

in line with the minimum standards agreed upon in the BEPS project and has a significant impact on double taxation treaties, in particular with the introduction of the PPT as a general anti-abuse rule.

Regarding the interpretation of international tax treaties, it is accepted that they must be interpreted in accordance with the rules of public international law. The Vienna Convention on the Law of Treaties – Part III, Section 3, Interpretation of Treaties – applies for the interpretation of double taxation treaties.

In a case of 5 May 2015, relating to total return swap agreements and other derivatives, the Federal Supreme Court denied the refund of withholding tax on the banks’ declared dividend income for the main reason that the banks were not beneficial owners of the income, as the banks acted as a sort of intermediary companies that were legally, economically or factually forced to transfer the dividend income to their counterparties. Therefore, the banks could not claim the benefit of the double tax treaty (Switzerland–Denmark in this case). In this regard, the court stated that the beneficial ownership criterion is an implicit requirement in all tax treaties. Thus, even if the double tax treaty Switzerland–Denmark did not contain an explicit reference to this requirement, tax authorities are entitled to apply the beneficial ownership requirement. The Federal Tax Administration will continue to apply its strict administrative practice and refuse refund of withholding tax in situations where it is assumed that the beneficial ownership is affected owing to derivatives strategies. The opinion of the Federal Supreme Court has been confirmed in its subsequent judgments.

X AREAS OF FOCUS

In two recent cases, the Federal Supreme Court removed uncertainties surrounding tax rulings and offshore structures. In this regard, the Federal Supreme Court confirmed that the tax authorities should be stricter when dealing with exotic offshore structures. Moreover, the roles between the cantonal and federal tax authorities have been clarified, meaning that only cantonal tax authorities have the power to grant tax rulings.

Until February 2017, following a decision of the Federal Supreme Court, Swiss tax authorities had adopted a formalistic view on the notification deadlines to be respected to avoid the retaining of withholding tax (dividend notification procedure). The 30-day deadline for notification was seen as a forfeiture deadline rather than an indicative deadline. Consequently, in the case of non-respect of such notification deadline, withholding tax was immediately due on any dividends that were not declared in the notification procedure and interest on late payment was to be paid on the withholding tax due. However, on 15 February 2017, the Swiss Withholding Tax Act was amended in connection with the application of the notification procedure on intra-group dividends (withholding tax relief at source). It follows from this amendment that, although the 30-day deadline remains unchanged, interest for late payment is now prohibited. Therefore, during a period of one year following the entry into force of the new provisions, companies that paid such interest to the Federal Tax Administration have been able to claim these payments back. The new regulation also provides for a retroactive effect whereas the refund shall also apply to cases that occurred before the entry into force of the new provisions, unless the tax claims or the late payment interest claims are time-barred or have already effectively been assessed prior to 1 January 2011.

More generally, Swiss tax authorities are paying more attention to transfer pricing issues and take a stricter approach with regard to structures and intra-group transactions
involving offshore entities and locations. Swiss tax authorities follow the OECD Guidelines, and therefore the methods said guidelines propose. It is, however, recommended to request a tax ruling depending on the complexity of the case.

Finally, the Federal Supreme Court has lately adopted a wider view on the international mutual assistance in tax matters. In a recent case, the Federal Supreme Court has allowed the transfer of data requested by the French tax authorities despite the fact that such data were stolen from a Swiss bank and delivered to the French authorities. Indeed, the judges held that the transmission of data took place out of Switzerland, which did not make it a punishable act under Swiss criminal law. Therefore, the French request for mutual assistance could not be deemed an act of bad faith, as it was sustained by the lower court. This judgment has once more decreased the extent of the bank secrecy, reflecting Switzerland’s will for broader cooperation against tax avoidance. In this connection, it must be borne in mind that the federal law on the automatic exchange of information has entered into force in 2017. The first exchanges took place in autumn 2018.

XI OUTLOOK AND CONCLUSIONS

Swiss tax law has undergone many changes following the entry into force of the Tax Reform and AHV Financing on 1 January 2020. Aside from the repeal of special tax statuses, this reform aims to maintain Switzerland’s attractiveness by lowering corporate income tax rates and by introducing cantonal patent box and additional R&D tax deductions. As of April 2020, Switzerland also began the process of reforming its WHT system.

More generally, it should be remembered that Swiss tax authorities take a stricter approach in many areas, such as in transfer pricing cases, and that many practices that have been accepted previously, in the field of offshore structures, for instance, are being challenged more and more by Swiss tax administrations. This particularly comes as a result of the massive international effort led by the OECD to fight against tax avoidance.

Regarding covid-19, Swiss tax authorities adopted measures to suppress default interests and granted payment facilities as well as deadline extensions to taxpayers.
Appendix 1

ABOUT THE AUTHORS

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Jean-Blaise Eckert is considered to be a leading lawyer in tax and private client matters in Switzerland. His practice covers private client, tax, contracts and commercial issues.


Jean-Blaise advises a number of multinational groups of companies as well as high net worth individuals. He sits on the board of a number of public and private companies. He has been nominated by Chambers in 2013 as a leading individual in tax. He is a frequent speaker at professional conferences on tax matters. He also teaches in the master’s programmes of the University of Geneva and the University of Lausanne. He is the secretary general and member of the Executive Committee of the International Fiscal Association (IFA). He is also a reporter to the IBA and IFA congress on Swiss tax matters.

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