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# The Legal 500 Country Comparative Guides

## Switzerland

# TAX DISPUTES

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This country-specific Q&A provides an overview of tax disputes laws and regulations applicable in Switzerland.

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## SWITZERLAND TAX DISPUTES



### 1. Is it necessary for a taxpayer to register with the tax authority? Are separate registrations required for corporate income tax and value added tax/sales tax?

An individual not qualifying as a Swiss resident for tax purposes may nevertheless become subject to Swiss income tax by establishing an economical connection. This is the case for certain investments and gainful activities in Switzerland, such as domestic real estate property, domestic self-employment, or board-membership of a Swiss company.

Typically, the assessment for income tax is based on a tax return filed annually by the taxpayer. The final income tax burden depends on the taxpayer's personal and financial situation and varies widely among cantons and communes. Certain groups of individuals, such as foreign nationals without C-permit, are taxed at source (PAYE tax system). This tax system is applied either instead of or parallel to filing a tax return.

The tax system for corporate income and capital taxes is also based on taxpayers' declarations when they meet the tax liability conditions. There is thus no specific registration for corporate income tax beyond the registration of companies in the commercial register. Companies with their statutory seat or place of effective management in Switzerland are considered Swiss tax residents and are subject to Swiss corporate income tax and capital tax. It is also the case of Swiss permanent establishments. Non-resident companies may be subject to Swiss corporate income tax if they alternatively have a permanent establishment or other economic relation in Switzerland.

Registration is separate for value added tax. In this respect, registration is either mandatory or voluntary, with the value added tax authority.

### 2. In general terms, when a taxpayer files a tax return, does the tax authority check it

### and issue a tax assessment - or there a system of self-assessment where the taxpayer makes their own assessment which stands unless checked?

Tax litigation can occur either in the normal course of a mixed assessment procedure or following a tax audit in the case of taxes subject to self-assessment.

Direct taxes are levied in accordance with a mixed procedure under which the taxpayer submits a tax return in relation to income and wealth taxes on a self-assessment basis normally within three months of the end of the tax period, which the competent tax authority will review before issuing an assessment decision. The assessment decision determines the tax base, the applicable tax rate and the tax amount. This represents the initiation of the tax assessment procedure. The cantonal tax authorities assess, in respect of individuals and legal entities, cantonal income/corporate taxes as well as direct federal tax, which includes income and corporate tax. Companies are initially assessed, subsequently to the annual tax returns by the tax authority on a provisional basis, with the final assessments being issued after the tax base was either subject of a tax audit or declared final by the authorities.

Regarding withholding tax, stamp tax and value added tax (VAT), the principle of spontaneous taxation applies, meaning that the taxpayer must determine the amount of tax due, declare it and pay said amount to tax authorities. In these self-assessment procedures, an audit is carried after the submission of a tax return and the payment. It is followed by a formal decision of the Federal Tax Authority (FTA).

### 3. Can a taxpayer amend the taxpayer's return after it has been filed? Are there any time limits to do this?

Taxpayers can amend their tax returns after filing as long as the final tax assessment decision has not been issued.

#### 4. Please summarise the main methods for a tax authority to challenge the amount of tax a taxpayer has paid by way of an initial assessment/self-assessment.

Regarding direct taxes, the tax reminder procedure allows the tax authority that discovers that a tax assessment entered into force is incomplete to collect the uncollected tax afterwards, plus interest on arrears. The right of the tax authority to initiate a tax reminder procedure lapses ten years after the end of the relevant tax period (art. 152 LIFD and art. 53 para. 2 LHID). This right to a tax reminder expires in any case in the limitation period of fifteen years after the end of the tax period. The taxpayer is informed in writing of the initiation of a tax reminder procedure against him (art. 153 para. 1bis LIFD and art. 53 para. 4 LHID). If the taxpayer is deceased, the procedure is initiated against his heirs.

There is no formal tax reminder procedure regarding withholding tax, the process being based on a self-assessment. However, new questions are raised by the authority and a new invoice is issued.

#### 5. What is the procedure where a taxpayer has not registered so is unknown to the tax authority (for example a newly incorporated company or a foreign company operating through a permanent establishment?)

With regard to individuals, a tax return is sent, regardless of the registration at the Cantonal Population Office.

Concerning corporate entities, the tax authority must first register the taxpayer, which is the case for Swiss companies. Thus, it is only in the case of a foreign company with an activity in Switzerland without having registered a branch office or when the formal seat is abroad while deploying an effective management in Switzerland that a concern arises. The tax authority will approach the representatives of the foreign entity in Switzerland provided they are known. In practice, the tax authority rather seeks to challenge an affiliated entity that is registered in Switzerland, under two alternative angles: the first one is based on the place of effective management in Switzerland, while the second one involves transfer pricing, which is most often the case.

#### 6. What are the time limits that apply to

#### such challenges (disregarding any override of these limits to comply with obligations to relief from double taxation under a tax treaty)?

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.

The prescription periods cannot be extended, but they can be suspended or interrupted.

The prescription continues to run as soon as the ground for suspension disappears. The statutory prescription period that has already elapsed thus remains valid. This is the case in tax law, in particular in the case of a complaint, appeal or review procedure provided that the tax claim is secured or postponed and that the taxpayer is not a Swiss resident.

If a prescription period is interrupted, a new period starts again from the beginning as the time elapsed before the interruption does no longer count. Such cases arise as a result of a measure establishing or enforcing the tax claim of the taxpayer (Art. 120 para. 3 LIFD). This includes the delivery of the tax return, the request to complete the annexes to the tax return, as well as the notice that the assessment will be made at a later point in time. The prescription period also starts again with any procedural act pursuing the tax contravention or offence, whether it concerns the taxpayer or possible other participants.

#### 7. How is tax fraud defined in your law?

Tax fraud is a qualified offence that is a form of tax evasion. It causes the tax authority to wrongfully abstain from issuing a final assessment or causing an incomplete assessment. This offence requires the taxpayer to use fraudulent documents (e.g., a balance sheet not showing the correct assets and liabilities for direct taxes) or to develop machinations or a "web of lies" to purposefully mislead the tax authorities (indirect taxes).

#### 8. How is tax fraud treated? Does the tax authority conduct a criminal investigation with a view to seeking a prosecution and custodial sentence?

The FTA has a criminal affairs and investigations division.

Criminal tax litigation focuses on investigating and punishing offences such as tax evasion or tax fraud. Tax fraud is prosecuted by ordinary criminal prosecutors and is listed on a person's permanent criminal record. It is referred by the cantonal tax authorities to the public prosecutor who will bring the matter before the cantonal criminal court. The court will rely on the administration's investigation and will not order investigative measures of its own.

These procedures usually end with the issuing of a fine by the tax authority. Tax fraud is generally punishable by a penalty or imprisonment, plus the relevant penalty for tax evasion. Inexact salary certificates are considered a more serious criminal offence. 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.

Tax fraud can also result in prosecutions for money laundering. Anyone who commits an act that hinders the identification of the origin, discovery or confiscation of assets that he or she knew or should have presumed to be the result of a qualified tax offence, can be punished by a custodial sentence of up to three years or by a pecuniary penalty. The amount of evaded tax must be at least 300'000 Swiss francs.

### **9. In practice, how often is a taxpayer audited after a return is filed? Does a tax authority need to have any justification to commence an audit?**

Every tax return filed goes through a formal tax assessment process with the tax authorities in charge. Tax authorities may then ask for additional information and statements. A formal tax assessment is issued at the end of this audit process. Swiss corporate income tax law does not outline specific audit process. Tax authorities will generally review the tax return and may request further information or may inspect the taxpayer's premises in order to assess taxpayers on a true and complete base.

Regarding indirect taxes levied under the self-assessment procedure, the FTA will not immediately check the spontaneous assessment and payment of the taxpayer, but rather later proceed to a tax audit covering several years.

It should be noted that there is no general rule regarding the frequency of these audits. In any case, they are not regular but rather random.

### **10. Does the tax authority have to abide by any standards or a code of conduct when carrying out audits? Does the tax authority publish any details of how it in practice conducts audits?**

The FTA, the Swiss Tax Conference (STC), EXPERTsuisse and the IFF-HSG have documented the principles and rules of conduct in the "Tax Code of Conduct 2021". Its aim is to ensure the efficient implementation of legal requirements and to strengthen the trust between taxpayers, tax agents and tax authorities over the long term. It is intended as a recommendation for employees of tax administrations and tax agents or representatives of companies working in the tax field. In addition, the FTA publishes circulars for cantonal tax authorities, fiduciaries and natural and legal persons. They provide information on certain aspects of direct federal tax, withholding tax and stamp duty.

### **11. Does the tax authority have the power to compulsorily request information? Does this extend to emails? Is there a right of appeal against the use of such a power?**

The taxpayer has a duty to co-operate during the tax assessment procedure in civil proceedings. They also have to provide information to the tax authority on request. As a rule, courts do not order any discovery of their own, but rather limit themselves to assessing a case based on the facts put before them by the taxpayer and the tax authority. If a court deems that the facts are not sufficient for it to decide a case, it can remit the case back to the competent tax authority with instructions. In criminal proceedings, a taxpayer accused of committing a tax offence is not obliged to disclose any information or documents, but has a right to remain silent in accordance with the privilege against self-incrimination.

All deficiencies of the tax authority's decision (whether of a legal or factual nature) can be appealed. The cantonal courts can fully review legal and factual questions.

### **12. Can the tax authority have the power to compulsorily request information from third parties? Is there a right of appeal against the use of such a power?**

The tax laws prescribe that a number of third parties are obliged to provide certificates, information and data to the tax authorities during the taxation procedure. There are various categories of third parties obliged to provide

information (employer, persons having a contractual relationship with the taxpayer). Other authorities and third parties have a direct duty to provide information spontaneously (certain companies, spouses, heirs). If the taxpayer does not provide the required certificates or refuses to request, the tax authority may request them directly from the third party. Legally protected professional secrecy is reserved (such as banking secrecy).

A distinction is made between tax evasion and fraud, as only cases of fraud can justify the lifting of bank confidentiality. However, bank employees may be required to provide information if any suspicions of money laundering arise.

Professional secrecy applies to any document or communication between attorneys and their client (attorney-client privilege, bank secret). Furthermore, attorneys do not have the obligation to report suspicions of money laundering, unless they are acting as a financial intermediary in the transaction and suspect that the amounts involved are the results of tax fraud.

### **13. Is it possible to settle an audit by way of a binding agreement, i.e. without litigation?**

Swiss tax authorities are generally open to discussing a particular case with the taxpayer before they issue a decision if they feel they need further information on certain points and are amenable to solid arguments for a particular tax treatment.

Moreover, for a number of offences considered to be reasonably minor, the prosecuting authorities can issue penalty notices without court involvement, allowing early resolution of criminal law offences before trial. The prosecuting authority may also be amenable to grant a type of plea deal especially when the facts or the legal interpretation are unclear.

Additionally, taxpayers are offered a voluntary disclosure procedure for undeclared assets and income subject to taxation in Switzerland. This procedure provides the opportunity for a taxpayer to disclose tax offences such as tax evasion or tax fraud, in order to avoid a criminal prosecution and fines.

### **14. If a taxpayer is concerned about how they are being treated, or the speed at which an audit is being conducted, do they have any remedies?**

Administrative decisions may be challenged on the grounds that they are unlawful, by lodging a formal complaint or an appeal. 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.

There is generally no time requirement or deadline to render a decision, which makes it difficult to anticipate when a decision can be expected. Courts must however render their decisions within a just and reasonable time, which will depend on the individual case.

### **15. If a taxpayer disagrees with a tax assessment, does the taxpayer have a right of appeal?**

Civil tax litigation is generally referred to as assessment litigation in Switzerland. It is standard procedure in Swiss tax law that assessment litigation takes place before the tax authorities as a first step, before an appeal can be brought by the taxpayer to the administrative courts. For the detailed procedures, *cf* question 16.

### **16. Is the right of appeal to an administrative body (independent or otherwise) or judicial in nature (i.e. to a tribunal or court)?**

The taxpayer generally is not obliged to challenge immediately said assessment in court. Rather, within 30 days of its notification, the taxpayer may turn to the tax authority that issued the tax assessment to compel it to issue a new decision. This procedure allows numerous issues to be resolved in a quick and efficient way at little cost. The tax authority will then issue a decision on the formal complaint. This procedure is very common, often eliminates the need for court proceedings and generally takes only a few months. However, for complicated issues, this procedure offers limited solutions and tax authorities usually prefer to wait for a binding judgment made by a higher independent body (i.e., a court).

If the taxpayer does not agree with the newly issued decision, they may start judicial proceedings before the competent administrative court (*cf* question 27).

### **17. Is the hearing in public? Is the decision published? What other information about the appeal can be accessed by a third**

### party/the public?

Oral proceedings and hearings are the exception in mixed and self-assessment procedures. Generally, the taxpayer is not entitled to a public hearing in assessment litigation. However, there are some cantonal procedural provisions that provide for the possibility of an oral hearing. Such hearing is public, but the taxpayer can request a private hearing, which will generally be granted when tax proceedings deal with business and financial aspects that are legitimately private to the taxpayer.

If decisions are published, they remain anonymous.

The Federal Supreme Court will sometimes publicly debate its decision in cases it holds to be particularly important. However, this is not a hearing but a public display of the court's decision-making process, as the parties involved will not be invited to participate in any way.

### 18. Is the procedure mainly written or a combination of written and oral?

The procedure is generally based on written exchanges in tax matters. Assessment litigation, closing arguments and appeals consist thus of written proceedings. Where there are exceptional oral closing arguments, the arguments should summarise the written submission.

Regarding criminal cases, the taxpayer has a right to a public trial before a court. He can request a private hearing or trial by presenting valid reasons. For the closing, the canton decides whether both written and oral arguments can be submitted. Criminal proceedings in the case of tax fraud are generally held orally and publicly. Regarding the appeal of a criminal law decision, the court of appeal can choose written proceedings if the decision only relates to legal issues. The procedure before the Federal Supreme Court is generally based on written exchanges, as oral hearings are rare.

### 19. Is there a document discovery process?

There are two situations, both in a criminal context, where the authorities have policing powers allowing a document discovery process. The first situation concerns the usual but in fact infrequent cases where the tax authority transmits the tax fraud case to the cantonal criminal authorities which have policing powers. The second situation concerns cases in which the criminal affairs and investigations division of the FTA intervenes. This division has policing powers under the conditions of art. 190 LIFD.

In particular, there must be a well-founded suspicion of serious tax offences, assistance or incitement to such acts. The Director of the division can then authorise the FTA to conduct an investigation in cooperation with the cantonal tax authorities and order a search.

### 20. Are witnesses called to give evidence?

Witness evidence does not play a significant role in assessment litigation but is available in criminal litigation. Despite that, it hardly ever plays a role in tax litigation. Usually, witnesses give oral evidence that can only be taken into account if the facts cannot be clarified sufficiently otherwise.

### 21. Is the burden on the taxpayer to disprove the assessment the subject of the appeal?

The burden of proof in assessment litigation is on the taxpayer regarding elements that reduce or eliminate the tax burden. Tax authorities have the burden to prove elements that give rise to the duty to pay or increase the tax.

In the assessment procedure, the taxpayer has a duty to cooperate and must provide the tax authority with certain documents and information. Non-compliance with this obligation often results in a reversal of the burden of proof. The role of the judge is to assess if the tax authority has determined the tax due in accordance with the legal framework.

In criminal tax litigation proceedings, the prosecution must establish that an offence has been committed. The taxpayer has no obligation to cooperate. The role of the judge is to assess if the prosecutor has proven that an offence has been committed. The principle of investigation is applicable.

### 22. How long does an appeal usually take to conclude?

Judicial proceedings may take between one and two years before judgment, generally depending on the workload of the courts and the complexity of the matter.

### 23. Does the taxpayer have to pay the assessment pending the outcome of the appeal?

The taxpayer does not have to pay the disputed tax to appeal the tax authority's decision since only tax assessments that have entered into force and no longer

subject to appeal are enforceable. However, the tax authorities will often set a deadline for payment of taxes not finally assessed.

Regarding indirect taxes, a taxpayer can pay the tax but has to clearly state that the obligation to pay the tax is disputed and that the payment made is conditional.

#### **24. Are there any restrictions on who can conduct or appear in the appeal on behalf of the taxpayer?**

Generally speaking, the rule is that only the taxpayer to whom the tax assessment has been notified 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, a legal representative, heirs, or the managers of a bankrupt's assets). With regard to direct income tax, the competent cantonal tax authority as well as the FTA have the right to lodge appeals against tax assessment decisions, without prior duty to lodge a formal complaint. 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 (the taxpayer and the debtor of the taxable benefit).

Lately, the Swiss Federal Supreme Court has rendered numerous decisions about administrative assistance procedure, in particular on party status. The Swiss Federal Supreme Court recalls that the Federal Act on International Administrative Assistance in Tax Matters of 28 September 2012 does not explicitly define party status, but that the persons entitled to appeal must qualify as party. The person concerned by the request and the 'other persons' who meet the requirements to form an appeal are entitled to form an appeal. The latter has the right to appeal if they have an interest worthy of protection in the annulment or modification of the contested decision. A bank, as the holder of the information, should therefore only be granted party status if its own interest is affected by the final decision. According to case law on international mutual assistance in criminal matters, a bank does not have an interest worthy of protection and therefore does not have standing to appeal if it 'only' has to provide information on its clients and not on the transactions it has itself carried out. Thus, banks, as holders of information, generally no longer have party status; except if affected by the request to an extent comparable to that of the

person formally concerned. In this respect, the bank has party status in particular if there is a serious fear that the foreign authorities will violate the principle of speciality. However, the fact that the holder of the information had to bear costs is not sufficient. There is also no risk to the reputation of the appellants, as their names were not published in this case.

#### **25. Is there a system where the "loser pays" the winner's legal/professional costs of an appeal?**

As a general rule, each party bears their own costs. The procedural fees are to be borne by the taxpayer only if they lose. The competent authorities will thus request an advance of the fees in case the taxpayer loses. 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. A party can be exempt from bearing the costs of proceedings if the proceeding is of general interest or if the taxpayer is unable to bear the costs.

If the taxpayer partially wins, they will have to pay part of the court fees. Advances on fees will be reimbursed to the taxpayer and their lawyer's or representative's costs may be partially borne by the state (request of compensation for necessary expenses).

#### **26. Is it possible to use alternative forms of dispute resolution - such as voluntary mediation or binding arbitration? Are there any restrictions on when this alternative form of dispute resolution can be pursued?**

Alternative dispute resolution procedures are not provided for in Swiss tax law. However, 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, in order to be fully aware of the tax consequences of a transaction or structure.

Tax rulings are commonly used in Swiss tax practice, although the law does not expressly refer to it. 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, fully and truthfully disclosed, usually in the form of a letter.

If the competent tax authority (cantonal or FTA for withholding tax) 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.

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

Regarding the binding effect of such rulings, the taxpayer is protected by the constitutional principle of good faith provided that the facts on which the agreement was based correspond to the actual situation and that all relevant elements (both favourable and unfavourable) have been presented. Swiss case law also emphasises the taxpayer may not diverge from the facts stated in the ruling.

With regard to other alternative dispute resolution means, double taxation treaties concluded by Switzerland usually refer to mutual agreement procedures. Such procedures also constitute 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.

### **27. Is there a right of onward appeal? If so, what are all the levels of onward appeal before the case reaches the highest appellate court.**

There are two levels of cantonal administrative courts (the first and second instance administrative court) before appealing to the Swiss Federal Supreme Court. The different appeals must be filed within 30 days of notification of the contested decision.

The procedure usually begins with the submission of a substantiated appeal to the court to be filed by either the tax authority or the taxpayer. The Federal Administrative

Court is the ordinary administrative court of the Swiss Confederation and generally rules with three judges and hears appeals against decisions from federal authorities, in the fields of withholding tax, stamp tax and VAT in particular. 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 Swiss Federal Supreme Court. The Swiss Federal Supreme Court is the highest judicial authority within the federal state and generally rule with three judges. It issues final decisions in tax matters and will either hand down a decision or remit the case back to the tax authority.

The cantonal courts and the Federal Administrative Court can fully review both legal and factual questions. The Swiss Federal Supreme Court does not re-establish the facts of the case but only applies the law on facts already determined. It may only correct the facts if they have been incorrectly established in a flagrant manner by the lower court or have been based on a violation of law.

### **28. What are the main penalties that can be applied when additional tax is charged? What are the minimum and maximum 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 amount of 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. Regarding tax fraud, cf question 8.

### 29. If penalties can be mitigated, what factors are taken into account?

The penalty will vary depending on the degree of fault or negligence, a primary defence being lack of intent that mitigates the penalty without exempting from liability.

### 30. Within your jurisdiction, are you finding that tax authorities are more inclined to bring challenges in particular areas? If so, what are these?

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

Until February 2017, following a decision of the Swiss 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 FTA 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 methods. However, it is recommended to request a tax ruling depending on the complexity of the case.

### 31. In your opinion, are there any areas which taxpayers are currently finding particularly difficult to deal with when faced with a challenge by the tax authorities?

Swiss tax authorities are generally short staffed. As a result, procedures can be lengthy, causing some uncertainty.

### 32. Which areas do you think will be most likely to be the subject of challenges and disputes in the next twelve months?

Swiss tax law has undergone a myriad of changes following the entry into force of the Federal Act on Tax Reform and AHV Financing on 1 January 2020. Aside from the repeal of special tax statuses, this reform aimed to maintain Switzerland's attractiveness by lowering corporate income tax rates and by introducing cantonal patent box and additional R&D tax deductions.

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 the OECD Two-Pillar Approach, Switzerland has been on board from the start, assuring its ongoing support in the common effort to achieve a well-functioning global tax system for multinational enterprises and therefore agrees taxation rules must be fundamentally reviewed to be adapted to our newly digitalised economy. Switzerland has indeed not yet implemented any digital services tax preferring a multilateral approach. On 1 July 2021, Switzerland announced it conditionally supports the key parameters. It is worth mentioning Switzerland already announced it will not manage to respect the OECD timeline and requires an implementation period of at least three years for both pillars from the finalisation of the multilateral agreement and the model regulation.

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