

# Abolishment of Swiss withholding tax on bond interest payments

The Swiss parliament abolishes Swiss withholding tax on bond interest payments and includes certain other changes to the Swiss withholding tax act and the Swiss stamp tax act. The reform significantly improves the attractiveness of the Swiss debt markets, both the debt capital markets and the bank debt markets. The abolishment of Swiss withholding tax on bond interest payments is expected to enter into force on January 1, 2023 but may be subject to a popular vote.

Published: 16 December 2021

Updated: 11 September 2023

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## Introduction

Switzerland levies a 35% Swiss withholding tax ("**Swiss WHT**") on, inter alia, bond interest payments. This makes bonds issued by Swiss entities unattractive for international investors. It is for this reason that Swiss headquartered multinationals in the past accessed debt capital markets by issuing bonds through foreign group companies with the Swiss group companies providing guarantee support, if required.

The Swiss legislator has long sought to reform the Swiss WHT regime on bond interest payments with a view to strengthen the Swiss debt capital markets. A previously proposed reform, which



was to introduce a paying-agent system, received mixed responses in the consultation procedure. The Swiss federal council subsequently proposed a new legislative project (the Act to Strengthen Debt Capital Markets, "**ASDCM**") which, as its most important feature, abolishes without replacement the Swiss withholding tax on bond interest payments for bonds issued from January 1, 2023 onwards. On December 17, 2021, the Swiss parliament approved the ASDCM. The changes are expected to enter into force on January 1, 2023, with certain parts possibly entering into force at a later date.

The ASDCM also includes a series of other measures, namely a legal basis for the collection of Swiss WHT on manufactured payments and a number of changes to the Swiss stamp tax act.

## Abolishment of Swiss WHT on bond interest payments

As its key measure, the ASDCM abolishes, without replacement, Swiss WHT on bond interest payments.

After the ASDCM's entry into force, the only Swiss interest payments that will continue to be subject to Swiss WHT are interest payments on bank deposits with Swiss resident banks and insurance companies.

With this measure, the Swiss parliament intends to increase Switzerland's attractiveness as a debt capital markets jurisdiction and to encourage multinational groups to centralize their debt financing activities in Switzerland.

## Impact on Swiss financing practice

The abolishment of Swiss WHT on bond interest payments is expected to have a profound positive effect on the Swiss finance markets, both the debt capital markets and the bank debt markets.

As far as the bank debt markets are concerned, currently, facility agreements with Swiss borrowers typically include the so-called *ten non-bank rule* and *twenty non-bank rule*. The ten non-bank rule limits the aggregate amount of non-bank lenders to ten, whereas the twenty non-bank rule requires that the borrower's aggregate number of non-bank creditors under all outstanding debts relevant for the qualification as debenture does not exceed twenty.

With the abolishment of the Swiss WHT on bond interest payments, the above restrictions will become obsolete. This will increase the possibility to syndicate facility agreements more broadly and it is expected that this will increase the attractiveness of the Swiss debt markets for alternative lenders (such as private debt funds).

As far as the debt capital markets are concerned, for bonds issued by a non-Swiss group company but guaranteed with a down-stream guarantee by a Swiss group entity, the Swiss tax practice requires the observance of the so-called *no flowback rules*. This too will become obsolete with the abolishment of Swiss WHT on bond interest payments.

## Swiss withholding tax on manufactured payments

Manufactured payments typically occur in two constellations: (i) under securities borrowing arrangements, when borrowers are required to pay to the lender any income (e.g. dividends or interest payments) received from the issuer of the security and (ii) in case a security is sold before the ex-date but the closing of the transaction occurs only after the ex-date.

Under a longstanding administrative practice, the Swiss Federal Tax Administration ("**SFTA**") required that Swiss custodians deduct Swiss WHT on manufactured payments. The practice was introduced to avoid situations, where more Swiss WHT is refunded than actual Swiss WHT deductions were made.

However, in a 2017 decision, the Swiss Federal Supreme Court held that the Swiss withholding tax act does not provide for a legal basis to deduct Swiss WHT on manufactured payments.

With the ASDCM, the Swiss legislator now introduces the legal basis to levy Swiss WHT on manufactured payments. The respective Swiss WHT is owed by the person who "*pays out, transfers, credits, offsets or remunerates*" manufactured payments subject to Swiss WHT. Typically, this will be the securities custodian.

The new rule differs from the previous practice of the SFTA in that it also requires that *non-Swiss* custodians of Swiss securities deduct Swiss WHT on manufactured payments. It is unclear at this stage, how (if at all) this provision will be enforced against non-Swiss resident persons (in particular non-Swiss resident custodian of Swiss securities) and it is expected that administrative guidance of the SFTA on this matter will be published.

## Swiss withholding tax on distributions of collective investment schemes

In line with its purpose to strengthen Swiss debt markets, the ASDCM also introduces a provision that exempts distributions of bond interest income made by Swiss collective investment schemes from the Swiss WHT, provided that the respective interest payments are accounted for separately.

## "Pragmatism" provisions

The legislator has also included two new "pragmatism" provisions in the Swiss Federal Withholding Tax Act: Purely because of formal errors no Swiss WHT shall be levied and no refund of Swiss WHT shall be denied if the taxpayer demonstrates that no loss in tax revenue occurred.

## Changes to Swiss transfer stamp tax act

### a) Abolishment of Swiss transfer stamp tax on Swiss issued bonds

In line with its purpose to strengthen the Swiss debt capital markets, the ASDCM also eliminates the Swiss transfer stamp tax (of currently up to 0.15%) on Swiss issued bonds.

## b) Abolishment of Swiss transfer stamp tax on foreign money market funds

Swiss and non-Swiss debt securities with a term of not more than twelve months (money market papers) are exempt from the Swiss transfer stamp tax (of currently up to 0.3%) already under current law.

The ASDCM now also exempts the issuance and redemption of units in non-Swiss investment funds holding exclusively debt instruments with a maturity of less than 397 days from the Swiss transfer stamp tax.

## c) Abolishment of Swiss transfer stamp tax for certain intermediaries in case of qualified participations

Swiss transfer stamp tax of up to 0.3% is due on the transfer of taxable (Swiss or non-Swiss) securities against consideration if a Swiss securities dealer is involved as either intermediary or as party to the transaction.

Pursuant to the Swiss stamp tax act, any corporation holding more than CHF 10m of taxable securities (balance sheet values) qualifies as a securities dealer for Swiss transfer stamp tax purposes, meaning that most Swiss holding companies are in scope of the Swiss stamp tax act.

A recent Swiss Federal Supreme Court decision in which a Swiss top holding company was found to act as an intermediary for a transaction of one of its non-Swiss indirect subsidiaries, which subjected the transaction to Swiss transfer stamp tax, caused some uncertainty on when exactly group holding companies act as intermediaries. To eliminate this uncertainty, the ASDCM will provide for a new Swiss transfer stamp tax exemption, for Swiss entities being only Swiss securities dealers by virtue of the CHF 10m balance sheet threshold. Transactions with the involvement of such Swiss securities dealers as parties or intermediaries will not be subject to Swiss transfer stamp tax if the transaction concerns (i) a participation of at least 10% of the nominal capital of a corporation and (ii) such participation qualifies as a fixed asset within the meaning of Swiss statutory accounting law.

Please do not hesitate to contact us in case of any questions.

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