

Group companies as intermediaries for Swiss transfer stamp tax purposes: important clarifications of the Swiss Federal Tax Administration

Recent clarifications from the Swiss Federal Tax Administration (SFTA) provide much-needed guidance on when holding companies and management companies qualify as securities dealers under Swiss transfer stamp tax law. The changes make it easier for Swiss headquartered group of companies to purchase shareholdings without attracting Swiss transfer stamp tax, thereby increasing Switzerland's appeal as a holding company jurisdiction.

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Larger Swiss holding companies that hold taxable securities (shares in subsidiaries) with a book value exceeding CHF 10m qualify as securities dealers for Swiss transfer stamp tax purposes. As such, transactions in which they participate as parties or intermediaries are subject to the Swiss transfer stamp tax at a rate of up to 0.3% (foreign securities) or 0.15% (Swiss securities).

A 2021 Federal Supreme Court (**FSC**) case (2C_638/2020) introduced considerable uncertainty regarding the question, when a group holding company is considered an intermediary in securities transactions. In that case, the FSC determined that a Swiss top-holding company acted as an intermediary in a transaction by a non-Swiss indirect subsidiary, as board members and directors of the Swiss top-holding company were involved in the negotiation of the transaction.

Following the FSC's decision, some groups of companies began channeling M&A activities through separate management (M&A) companies, which, as they do not hold securities, do not meet the CHF 10m threshold. However, these structures raised questions about whether these management companies should not be considered securities dealers, given their primary role in



negotiating (taxable) securities transactions. This posed a particular challenge for Swiss-headquartered groups that, for operational reasons, often locate their M&A company domestically, unlike non-Swiss groups, whose M&A companies are typically based abroad.

In a communication released last Friday, the Swiss Federal Tax Administration (**SFTA**) clarified its practice, effective for all pending cases, as follows:

Firstly, the SFTA confirmed that a management company providing intermediary services solely to other group entities does not qualify as a securities dealer.

Secondly, the SFTA stated that a holding company does not act as an intermediary in a securities transaction if either:

- The group has hired and remunerates an independent third-party investment bank for the transaction; or
- The negotiations are led by an individual not belonging to the holding company.

The SFTA's clarification is a welcome update and we view this communication as an indication that the SFTA intends to adopt a more lenient approach in determining who qualifies as securities dealers and intermediaries. This clarification provides added certainty for Swiss groups that have organized their M&A activities within a separate Swiss company and clarifies the circumstances under which a Swiss holding company qualifies as intermediary in a securities transaction.

Please do not hesitate to contact us if you have any further questions on this subject.

Legal Note: The information contained in this Smart Insight newsletter is of general nature and does not constitute legal advice.

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