

# Corporate Tax Switzerland



Beginning our special focus on Corporate Tax, *Lawyer Monthly* turns the attention on Switzerland by speaking to David Broenimann, from Meyerlustenberger Lachenal. David is a Certified Tax Expert in the firm's Zurich office with over 12 years of experience in international tax law, making him more than well-placed to comment.

## **Please introduce yourself, your role and your firm.**

Meyerlustenberger Lachenal provides enterprising, innovative and solution-focused services to its clients. The firm offers its clients the comprehensive range of services associated with a large law firm while still providing a high degree of individual attention and flexibility.

With offices in Zurich, Geneva, Zug and Lausanne, Meyerlustenberger Lachenal is present in the most important economic centers in Switzerland. Meyerlustenberger Lachenal is also one of the few Swiss law firms with an office in Brussels to assist its clients with their needs as related to EU regulations.

I focus on both domestic and international corporate tax with an emphasis on corporate migrations, mergers and acquisitions as well as finance and intellectual property structures. I am a frequent lecturer on corporate tax issues both in Switzerland and abroad and serve as an expert in the Swiss Certified Tax Expert examinations.

## **What key corporate tax cases have you been involved in recently?**

The tax team of Meyerlustenberger Lachenal is currently involved in the tax neutral

migration of a billion dollar group from offshore to Switzerland. Besides the corporate tax structuring to ensure tax neutrality of the migration itself, the project includes advice to the owners of the group who reside in different jurisdictions (some with stringent CFC-legislation) and partly hold their interest in the group over offshore vehicles and trusts. Also, the project includes the design of a tax efficient structure for the future operations from onshore. In addition, the client requested that a tax neutral exit must be possible, should a different jurisdiction be considered to be more appropriate than Switzerland in the future. Thus, the structure designed by Meyerlustenberger Lachenal not only had to ensure tax neutrality upon migration and tax efficiency in operations, but also tax neutrality upon a potential future exit. As the international pressure on companies operating from offshore will likely not decline over the next few years, we expect more companies to migrate, and, given that Switzerland will in most cases be a very attractive alternative, we are pleased to provide the experience gained in this project to other groups.

## **What are the tax limitations of corporate restructurings in your jurisdiction?**

Swiss tax legislation provides for tax neutrality of corporate restructurings for most taxes and

for most types of restructurings, be it a merger, a spin-off or a change of corporate form. Basically, the requirements for tax neutrality are that the deferred tax revenue remains in Switzerland, i.e. that the tax base of assets and liabilities that are transferred is continued on the level of the absorbing company. A few additional requirements must be attended to, but with careful planning of any such corporate restructuring, tax neutrality is usually achievable. As a matter of course, a few limitations must be respected, but in summary, Swiss tax law provides for a significant degree of flexibility for both domestic and international groups seeking to restructure their operations in Switzerland.

## **Has there been an increase in corporate tax litigation due to the economic climate?**

We did not observe a dramatic increase in corporate tax litigation over the past months and years. Various reasons may be responsible for this. First, Switzerland escaped the worldwide economic turbulences quite well and thus, the relationship between tax authorities and tax payers was not compromised noticeably. Then, in looking at the tax revenue and its sources, it is remarkable that only about one quarter of total tax revenue in Switzerland is paid by corporations. Above all, however, we believe that it is the Swiss tax ruling practice that

helps keeping corporate tax litigation on a comparably low level: It is best practice in Switzerland to pre-discuss any critical or tax-wise uncertain transaction or structure with the competent tax authorities and to agree on the tax consequences in a written and binding tax ruling. As long as the fact pattern remains unchanged, such ruling provides legal certainty and the tax authorities adhere to the tax consequences outlined in the ruling. Obviously, this practice reduces the number of cases that are brought to court significantly as compared to other jurisdictions.

engaged in international trade, financing or IP exploitation and benefit from an overall effective tax rate of 8-10%. This status will presumably be replaced by new regimes. Whilst it is probable that a license box regime will be introduced, it is not foreseeable yet what alternatives will be offered to trading and financing companies. The Swiss government is, however, aware of the importance of these companies to the Swiss economy and national budget. Thus, it is virtually certain that the Third Corporate Tax Reform will keep up Switzerland's attractiveness to foreign investors.

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#### What amendments have been made to tax regulation recently?

As of 1 January 2013, the Federal Act on the Taxation of Employee Stock Option Plans and Employee Share Plans was enacted. The act clarifies and simplifies various aspects of equity-based compensation. In summary, equity based compensation is taxed at grant date. Only with regard to employee stock options that are either (i) not listed or (ii) restricted, taxation occurs at exercise.

Also, a few new double tax treaties (including agreements on exchange of information) were signed by the Swiss government.

Besides the above, the corporate tax landscape remained relatively unchanged during the last years. Nevertheless, the Swiss government announced the Third Corporate Tax Reform. Whilst it is not clear yet what the reform will look like in detail, it is expected that it will be designed to remove the international pressure Switzerland is facing due to certain privileged tax regimes currently provided for by Swiss law. One of these regimes is the so-called mixed company status. Mixed companies are currently used for companies

#### What sets the tax system in your country apart from others?

In our experience, the combination of three elements makes the Swiss tax system unique in the world: First, the level of taxes is amongst the lowest in the world. As the cantons have a considerable degree of flexibility in levying their own taxes, there is a certain competition amongst them which results in a relatively low tax burden for both corporations and individuals. Statutory tax rates for ordinarily taxed companies may be as low as approx. 12%, and personal income tax rates in the maximum bracket may be as low as 19%. Secondly, the relationship between tax authorities and tax payers and their advisors is based on mutual trust and cooperation, which is proven by the tax ruling practice as outlined above. The authorities usually are very business-oriented and responsive. The third element is the predictability, stability and the limited complexity of Swiss tax legislation. Changes to the law or respective interpretations by the authorities are put up for discussion between authorities, tax payers and tax advisors before enactment and the latter is announced well in advance.

#### What are the tax implications for foreign companies involved in M&As in your country?

Three key issues must be carefully analyzed when a foreign company prepares to acquire a Swiss based company. One issue is only applicable when the seller is a Swiss resident individual. In such transactions, buyers must plan around the concept of indirect partial liquidation, which basically could lead to a taxation of excess cash available in the target as income on the level of the seller. Whilst the tax would generally hit the seller, the latter would usually request indemnification from the buyer in the share purchase agreement. The other key issues apply irrespective of the person of the seller: Acquiring companies must be aware that Swiss dividend withholding tax of 35% is comparatively high, so profit repatriation planning is of importance when structuring an acquisition. As matter of course, planning opportunities are available in order to avoid any tax leakage upon profit repatriation. A third key issue is that debt push down strategies are available only to a limited extent in Switzerland. Should debt push down be a critical element to a transaction, careful planning is required. **LM**

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