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# Switzerland

by Werner Lederer and Katja Krech

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## 2011: The Year in Review

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# 2011: THE YEAR IN REVIEW

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## Switzerland

*by Werner Lederer and Katja Krech*

In 2011 Switzerland implemented OECD standards on the exchange of information in new or revised tax treaties. Also, different provisions have been added or revised as part of the Corporate Tax Reform II.

### Tax Treaties

Following the Federal Council's decision of March 13, 2009, Switzerland renounced its previous reservation to the exchange of information (EOI) article (article 26) of the OECD model tax treaty. Since then the government has moved rapidly to update its network of tax treaties to meet international standards regarding information exchange. In February 2011 the government announced that new agreements recently negotiated by Switzerland are not fully in line with international standards because of an issue regarding an EOI partner's obligation to provide identification information in its information exchange requests. Switzerland has since modified its initial interpretation of the obligations for the exchange partner to provide information to meet the standards.

The government is seeking to add to its tax treaty with the U.S. an amendment that would allow the U.S. to gain access to Swiss banks' U.S. account holder data based on behavioral patterns of the holders. On August 8 the Federal Council requested the parliament to approve a supplement to the treaty protocol signed on September 23, 2009, that would allow the U.S. to acquire information in group requests if certain patterns are identified. The parliament has asked for a more detailed definition of the term ''behavioral patterns.''

In September Switzerland signed an agreement with Germany that would establish a new withholding tax regime on undeclared Swiss bank accounts held by German residents without compromising bank client anonymity. The agreement would also implement an enhanced information reporting mechanism. Switzerland signed a similar agreement with the United Kingdom in October.

As of October 20, Switzerland has in place 79 comprehensive double tax agreements. Twelve more have been signed or initialed by the competent authorities.

### Relationship With the EU

Some cantonal corporate tax regimes came under scrutiny from the EU in 2011. So far the Swiss authorities have made no decisions to modify those tax regimes. Because some of the EU member states have similar tax regimes, it will be interesting to see how the issue develops in the months to come. The canton of Nidwalden, for instance, introduced a license box similar to the Dutch system as of January 1, 2011.

### Federal Developments

The Swiss tax system's transition from the nominal value principle to the capital contribution principle took effect as part of the Corporate Tax Reform II on January 1, 2011. With the transition, repayments of all kind of capital contributions made by shareholders after December 31, 1996, are exempt from Swiss income and withholding taxes.

As of January 1, the thresholds for corporations to claim the participation exemption have been lowered. Dividend income qualifies for the participation exemption if the recipient owns at least 10 percent (instead of 20 percent) of the shares or the profits and reserves of the distributing corporation or holds shares with a market value of at least CHF 1 million (instead of CHF 2 million). Capital gains qualify for the tax relief if the previously mentioned 10 percent (instead of 20 percent) threshold is met and the shares were acquired more than one year before the sale.

A provision took effect January 1 that allows for substantial tax savings for those giving up self-employed business activities upon reaching the age of

55. Simultaneously, a new provision took effect regarding a tax deferral upon the transfer of real estate from a person's business to his private wealth.

VAT rates increased as of January 1. The ordinary tax rate rose from 7.6 percent to 8 percent, the reduced tax rate rose from 2.4 percent to 2.5 percent, and the special rate for accommodation suppliers rose from 3.6 percent to 3.8 percent.

An amendment to the Banking Act will allow banks to issue contingent convertible bonds to increase core equity capital if their equity falls below a certain level. A change in the Stamp Tax Act will exempt from the stamp duty shares issued in connection with the conversion of those bonds. The amendments could take effect January 1, 2012. The change in the Stamp Tax Act will ensure that the contingent convertible bonds are issued by the mother company in Switzerland and not by foreign subsidiaries of the Swiss bank. The Federal Council also proposed making the withholding tax a paying agent tax.

## Tax Legislation Projects

The Corporate Tax Reform III addresses the problems Switzerland has regarding the different tax regimes available, especially on a cantonal level. Part of it will also eliminate the stamp duty, and part could also modify the capital contribution principle. Another major project begun this year is the transformation of the withholding tax into a paying agent tax.

Switzerland's Christian and Socialist parties are leading a push for a constitutional amendment that would transfer legislative power in inheritance and gift tax matters from the cantonal level to the federal level. The proposal calls for a 20 percent tax rate on inheritances and gifts exceeding CHF 2 million; children would also be subject to the tax. The initiative would require the approval of a majority of Swiss citizens as well as a majority of the cantons that would have to give up their power to levy inheritance and gift taxes.

Under current federal and several cantonal laws, foreign residents not performing a lucrative activity in Switzerland may apply for lump sum taxation. At the cantonal level, there are recent developments to end this way of assessing income and wealth. The canton of Zurich ended lump sum taxation effective January 1, 2010. The canton of Schaffhausen also ended it.

## Case Law

The Federal Supreme Court held early in 2011 that the notification procedure, in which a Swiss company may notify the government of a dividend payment rather than pay the 35 percent withholding tax, can be granted only if ordinance requirements are met. The ordinance requires forms to be submitted to the Federal Tax Administration within 30 days of the maturity date of a dividend resolved by a Swiss entity. The Court held that if the deadline isn't met, the right to settle the withholding tax through the notification procedure is forfeited. ◆

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