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International Debt Financings of Swiss Headquartered Groups Become Even More Attractive

The Swiss Federal Tax Administration recently announced a new practice that significantly improves the ability of corporate groups to raise debt abroad and to use the proceeds in Switzerland.

This new practice will enable tax efficient financings for Swiss groups.

1. Current Regime

Today, Swiss headquartered groups looking to raise capital via the international debt capital or bank debt markets may face Swiss withholding tax (WHT) in case the issuer or borrower is a non-Swiss group member and where the structure requires guarantee support by the Swiss parent company.

As a general rule, WHT (at a rate of 35%) is applicable on the interest payments, unless (a) the number of non-bank lenders to a Swiss borrower is limited to a maximum of 10 (which is typically feasible in bank debt transactions but typically not feasible in debt capital market transactions), or (b) the proceeds raised are only used outside of

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Switzerland, or (c) if there is backflow to Switzerland, the maximum backflow is capped at the equity amount of the non-Swiss issuer.

It is obvious that these rules heavily limit Swiss companies to access the international debt financing market.

2. New Regime

On 5 February 2019, the Swiss Federal Tax Administration (SFTA) published an important clarification to the last of the aforementioned exemptions. The new regime will increase the ability of Swiss groups to raise funds outside Switzerland and to use such funds in Switzerland through the applications of two exceptions:

2.1. Equity Exception

Under this exception it is now possible that the non-Swiss issuer, which holds a parent guarantee from the Swiss headquarters, grants a loan back to the Swiss company sourced from the funds raised on the international capital market whereby the upstream loan shall not exceed the aggregate equity of all non-Swiss subsidiaries. In case the shareholding is less than 100% in the non-Swiss subsidiary, the equity amount is reduced accordingly.

2.2. Intragroup Funding Exception

Under this exception it is now possible that the non-Swiss issuer, which holds a parent guarantee from the Swiss headquarters, grants a loan back to the Swiss company sourced from the funds raised on the international capital market whereby the upstream loan shall not exceed the aggregate amount of all intragroup loans granted by Swiss group members to non-Swiss group companies.

3. Combination of Exceptions

SFTA stated that the equity exception and the intragroup funding exception may be combined.

4. Upfront Tax Ruling Required

SFTA requires an upfront tax ruling if a Swiss headquartered group wants to benefit from the new exceptions.

We are at your disposal to analyse existing structures and new financing opportunities

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