Are you aware of the Swiss securities transfer tax?

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Key takeaways

- **Switzerland levies a tax on transfers for a consideration of certain domestic securities or similar foreign instruments if a Swiss securities dealer is involved as a party or intermediary.**
- **A Swiss "securities dealer" may be e.g. a domestic bank, Swiss securities broker, or a Swiss corporation holding balance sheet assets in taxable securities in excess of 10 million Swiss Francs.**
- **To reduce or work around the tax, investors might want to review alternative transactions that would not involve a Swiss securities dealer; to peruse tax exemptions, which may be more attractive to certain types of transactions; or to be sensitive to the nature of a party involved.**

Which transactions are subject to Swiss securities transfer tax?

The securities transfer tax is triggered if:

- Taxable securities are transferred; and
- The transfer is made against consideration; and
- A Swiss "securities dealer" (as defined in Swiss tax law) is involved as a party or intermediary; and
- No tax exemption applies.

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What is a "taxable security"?

"Taxable securities" include, in particular, corporate shares, bonds, and investment fund units – whether the issuer of the securities is in Switzerland or overseas.

"Bonds" include bond-like instruments such as a syndicated loan re-characterized as a bond under the so called Swiss "non-bank lenders rules".

Asset tokens representing bond-like instruments are also taxable securities. Other crypto assets, however, are generally not taxable securities unless the crypto asset references any other specific taxable security.

Straight derivatives, such as call / put options, are not taxable securities. If there is, however, physical settlement, such physical settlement can involve a transfer of taxable securities (e.g., corporate shares).

What is a transfer "against consideration"?

If you acquire taxable securities in a purchase transaction, this is a transfer "against consideration". Also delivery of shares in physical settlement under a derivative would be a transfer against consideration.

Also, if a taxable security is used as collateral or if there is a lien over a taxable security, realization of the collateral / lien can constitute a transfer against consideration and trigger Swiss securities transfer tax.

A securities lending transaction is not treated as a transfer against consideration in this sense because no purchase price is paid for the shares.

Who is a Swiss "securities dealer"?

The term Swiss "securities dealer" includes, in particular, banks in Switzerland, brokers and professional securities dealers in Switzerland, asset and wealth managers in Switzerland, and Swiss companies with more than 10 million Swiss Francs balance sheet assets in taxable securities.

Activities strictly limited to pure advisory ones do not generally trigger the characterization as "securities dealer". If, however, the advisor also places orders for his customer, the advisor is likely a "securities dealer" for Swiss securities transfer tax purposes.

A business established outside Switzerland and not acting through a Swiss branch office is not a "Swiss" securities dealer. The same is true for a Swiss securities dealer's branch office outside Switzerland.

What is the tax rate and when is the tax triggered?

The tax is levied on the consideration owed for the transfer of the securities. For securities issued by a Swiss issuer, the tax rate is 0.15%. For securities issued by a non-Swiss issuer, the tax rate is 0.3%.

The tax is triggered when the contract for transfer of the taxable security is concluded. If completion of the transaction is subject to unmet conditions, then the tax is triggered only upon the transfer of the security.

Who owes the tax?

The Swiss securities dealer owes the tax. If the Swiss securities dealer acts as an agent or on behalf of a customer, market practice is such that the Swiss securities dealer charges the tax to his customer.

The Swiss securities dealer owes the tax as follows:

When the Swiss securities dealer is a party in the transaction:
The Swiss securities dealer owes 50% of the tax for himself (i.e., 50% x 0.15% or 50% x 0.3% respectively) and another 50% for the counterparty unless the counterparty is also a Swiss securities dealer (then owing the tax for himself) or a tax-exempt investor.

When the Swiss securities dealer is involved as an "intermediary" (as defined for this purpose in Swiss tax law):
The Swiss securities dealer owes 50% of the tax for each party who is not also a Swiss securities dealer (then owing the tax for himself) or a tax-exempt investor.

The Swiss securities dealer is deemed to act as an intermediary (as opposed to a party) in the transaction, if the securities dealer:

- clears the transaction with his customer under the same terms as apply in the original transaction concluded with the counterparty; or
- his involvement does not go beyond making a referral for a transaction opportunity; or
- resells the securities on the same day.

Which tax exemptions are available?

Tax exemptions can be available for specific transactions or securities, or for specific parties ("exempt investors"). If the tax exemption applies because of the nature of the transaction or security, no Swiss securities transfer tax is levied at all. If the tax exemption applies because of the nature of a party involved, then 50% of the tax will fall away while another 50% charge continues to apply, unless the other party is also an exempt investor.

Exemptions available because of the nature of the transaction or because of the nature of the security include, for example:

- issuing securities - with some exceptions, for example, the issue of rights in non-Swiss collective investment funds is not an exempt transaction;
- trading in subscription rights;
- redeeming securities;
- handling money-market papers;
- reorganizations or restructurings; and
- transferring intragroup shareholdings of at least 20%.

Exemptions available because of the nature of a party involved include, for example:

- non-Swiss banks, brokers, and central counterparties (CCPs);
- transfers of non-Swiss bonds to a non-Swiss buyer or from a non-Swiss seller;
- non-Swiss companies listed on a recognized stock exchange, and their consolidated non-Swiss group companies;
- non-Swiss life insurance companies if subject a recognized supervision; and
- collective investment funds.

For an investment vehicle to be recognized as a "collective investment fund" for Swiss tax purposes and thus as an exempt investor for Swiss securities transfer tax purposes, one of the following tests must be met:

- That the Swiss Financial Market Supervisory Authority ("FINMA") has granted a license for distribution of units of the fund in Switzerland; or
- That the investment fund is under supervision of a recognized financial regulator (e.g., the Swiss Federal Tax Administration recognizes the Cayman Islands regulator); or
- That the investment fund’s "purpose of offering opportunities for collective investment" (see below) holds true.

If an investment vehicle's purpose is to "offer opportunities for collective investment", the Swiss tax authorities look to see if, in particular:

- "Third-party management" is in place; that is: there are no or very limited rights of the investor to exercise power over the entity’s investment management;
- An Offering Memorandum exists;
- Reporting is carried out in a way similar to reporting for regulated collective investment schemes; and

- The investment vehicle has / uses bodies typical for collective investment schemes, such as an investment manager, a custodian bank, etc.

Single investor funds would be recognized as "collective investment funds" only in special situations.

Need for action?

Investors engaging in transactions (including M&A deals) that might involve a Swiss "securities dealer" (as defined in Swiss tax law) must be aware of the Swiss securities transfer tax. While there is no standard procedure for tax mitigation, strategies to reduce or work around the tax may include:

- Working around involvement of a Swiss securities dealer (if possible), such as, for example, for shares listed in Switzerland bulk trades off exchange directly between parties outside Switzerland;
- Staggering transactions, relying on a combination of exemptions (e.g., group-internal) and out of scope situations; and
- Re-designing order flows and applying investor-related exemptions, in general.

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