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Back-to-back dividend distributions

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How can relief from the Swiss dividend withholding tax be obtained regarding a back-to-back dividend distribution?

Key takeaways:

- **Company groups often wish to record dividends as income across longer investment chains in the same financial year ("back-to-back dividend distributions").**
- **Under Swiss corporate law, back-to-back dividend distributions are possible (only) if certain conditions are met.**
- **For a back-to-back dividend distribution to qualify for relief from the Swiss dividend withholding tax, the Swiss tax authorities require all group companies involved in Switzerland to record their dividend income in a specific manner.**
- **This accounting method required by the Swiss tax authorities must be applied to the stand-alone financial statements prepared under statutory accounting rules (as opposed to tax accounting rules). It is therefore important to ensure that the statutory accounting meets the tax requirements.**

Under what conditions may a Swiss company distribute dividends?

Prompt profit distribution that individual group companies make is of great interest to corporations. This keen interest also applies especially to longer investment chains (subsidiary, parent company, grandparent company, etc.).

A Swiss parent company must make two dividend distributions to enable a subsidiary-generated profit distribution to the shareholders of the parent company (i.e., to the "grandparent company"). Thus, the subsidiary must distribute a dividend to the Swiss parent company followed by the Swiss parent company then distributing a dividend to its shareholders.

Swiss corporate law contains special provisions to protect the capital of Swiss companies (creditor protection). The shareholder may only receive income on the invested capital in the form of dividends from the balance sheet profit and reserves that either have been created or that otherwise exist for dividend distributions. The availability of the company's annual financial statements is a formal prerequisite for such a dividend distribution. If the company has an auditor, the latter must have audited the annual financial statements prior to the dividend distribution. The dividend distribution is based on the (audited) stand-alone financial statements of the Swiss company (in contrast to consolidated financial statements). Interim dividends, i.e., distributions from the cumulative profit of a current financial year, are generally not permitted - at least without formal (audited) interim financial statements as well as compliance with the requirements applicable to ordinary dividends.

Under what conditions is it possible to record back-to-back dividend income in the same financial year in the group?

Often group companies find it desirable and/or necessary (in the case of consolidated financial statements) to have the same financial year.

Due to the requirements of Swiss corporate law described above, only after the annual financial statements for the year Y-1 have been submitted can an effective dividend resolution for the year Y-1 be passed.

Therefore, the Swiss parent company may distribute the dividend received from its subsidiary for the year Y-1 to the parent company shareholders for the same year Y-1 only if the Swiss parent company has already recorded the dividend for the same year Y-1 as income. If the financial year of the subsidiary does not end before the financial year of the parent company, the parent company must record the dividend income "back-to-back" with matching phases.

The following conditions must be met to enable a Swiss parent company to record the dividend income in its stand-alone financial statements in the same year in which the profit at the subsidiary level is recorded in the subsidiary's stand-alone financial statements:

- The subsidiary's balance sheet closing date must not be later than that of the Swiss parent company (i.e., it is sufficient if both companies have the same financial year).

- The subsidiary must have resolved its dividend distribution for the year Y-1 before the Swiss parent company's general meeting approves the parent company's financial statements for the year Y-1.

- "Back-to-back" recording of dividends with matching phases must be disclosed in the notes to the Swiss parent company's financial statements.

For tax purposes, what must you take into account regarding back-to-back dividend distributions?

A dividend distributed by a Swiss capital company is generally subject to a 35% Swiss dividend withholding tax. Shareholders who are liable for corporate income tax in Switzerland can claim full relief from this Swiss dividend withholding tax. Group companies may apply for tax relief at source to avoid an actual withholding tax payment (with a tax refund only later). The prerequisite, however, for any relief from Swiss dividend withholding tax is that the Swiss parent company has "duly recorded" the dividend yields "as income". Swiss tax law does not provide for separate tax accounting rules for this purpose. Instead, the statutory accounting standards are decisive.

If the dividend has not been "duly" recorded at the Swiss parent company, the parent company will not be granted any relief from the dividend withholding tax.

In the case of a back-to-back dividend with matching phases, the dividend income at the Swiss parent company is already recorded in the financial year Y-1. The practice of the Swiss tax authorities, however, requires that the dividend income be recorded in the same financial year in which the dividend withholding tax is triggered. The dividend withholding tax is triggered, at the earliest, with the resolution on the distribution of dividends by the subsidiary. Due to the requirements of Swiss corporate law described above, an effective dividend resolution is not possible until the annual financial statements for year Y-1 are available, i.e., not until year Y-2.

Regarding a back-to-back dividend with matching phases, the question therefore emerges: how to meet the tax requirement of the dividend income's "due" recording in the year Y-2 even though the dividend income was already recorded in the year Y-1?

How can tax relief from the Swiss dividend withholding tax be obtained regarding a back-to-back dividend distribution?

To entitle the Swiss parent company to relief from Swiss dividend withholding tax, the Swiss tax authorities require the Swiss parent company to record the dividend income definitively in the Swiss parent company's income statement when the dividend becomes due (year Y-2).

Thus, the Swiss parent company must make an additional income-statement-related entry in the year Y-2 even though the dividend income has already been recorded in the financial year Y-1.

This specific entry, required by the Swiss tax authorities, must be made in the financial statements according to statutory accounting rules despite other accounting methods also being permitted under accounting law.

Financial year Y-1:

The parent company must record the dividend claim as a transitory item:

31.12. Y-1: Transitory assets / dividend income

Financial year Y-2:

The entry of the transitory item in year Y-1 must be reversed in the following financial year Y-2 with an opening entry:

1.1. Y-2: Dividend income / transitory assets

Later in the financial year Y-2, the Swiss parent company must make an entry in its income statement on the basis of either the dividend resolution or the payment of the dividend, which must state the following:

Receivables or cash and cash equivalents (e.g., bank account) / dividend income

Relief from the Swiss dividend withholding tax is granted (only) if the Swiss parent company adheres to these accounting methods.

Need for Action?

To qualify for relief from the Swiss dividend withholding tax regarding a back-to-back dividend distribution with matching phases, all group companies involved in Switzerland must record their dividend income in a specific manner. This particular book entry, required by the Swiss tax authorities, must be made in the stand-alone financial statements under statutory accounting rules despite other accounting methods also being permitted under accounting law. Most important is ensuring that the method of income recording, applied under statutory accounting rules, meets all tax requirements.

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