Swiss Share Issuance Stamp Tax: what do you know about the Swiss “stamp duty” on capital contributions?

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Key takeaways

- **If a capital company or a cooperative with its registered office in Switzerland or Liechtenstein creates any equity capital, this may trigger a share issuance stamp tax of 1%.**
- **If appropriate structural arrangements are made, it may be possible to inject equity capital without the share issuance stamp tax falling due.**
- **There are currently plans to abolish the share issuance stamp tax. Abolition is only likely to occur in April 2022 or later.**

Which transactions are subject to the share issuance stamp tax?

The Swiss share issuance stamp tax is levied on qualifying contributions to the equity of capital companies or cooperatives based in Switzerland. These rules apply in the same way to equivalent companies based in Liechtenstein.

These capital companies are subject to the share issuance stamp tax where the contribution is made by direct shareholders. As a general rule, contributions received directly by the company from indirect shareholders (e.g. the “grandparent company”) are not subject to share issuance stamp tax. In addition, latent grants of benefits by other associate companies from the same group (for instance due to inadequate transfer prices) are not subject to share issuance stamp tax.

Capital contributions in Swiss companies are not necessarily made in return for the issue of participation rights. Swiss company law also allows shareholders to invest resources directly in the reserves of a company, without any participation rights being granted in return. The Swiss share issuance stamp tax is also levied in such cases, thus irrespective of whether the company issues any participation rights in return.

Moreover, the conversion of borrowed capital into equity capital (e.g. by the waiver or reduction in the amount of monetary claims) may also be subject to share issuance stamp tax.

Swiss share issuance stamp tax is levied irrespective of whether the equity capital contribution is made in cash or as a contribution in kind.

Financing instruments other than equity capital contributions are not subject to share issuance stamp tax. In particular, share issuance stamp tax is not levied on the provision of borrowed capital. The distinction is drawn in formal terms, without reference to economic considerations. Accordingly, even long-term, interest-free loans are not subject to share issuance stamp tax. Convertible bonds only trigger share issuance stamp tax if conversion actually occurs.

Under certain circumstances, funds classified as borrowed capital under civil law may qualify as so-called “hidden equity” for the purposes of Swiss taxes on profits and capital as well as withholding tax on dividends (see regarding this matter the Tax Update of 15 July 2019). Hidden equity is not however subject to share issuance stamp tax.

A special case that triggers share issuance stamp tax is a qualifying so-called “shell company transaction”. A qualifying shell company transaction involves the transfer of a majority of the participation rights in a company that has already been de facto liquidated or the assets of which have been transformed into liquid form.

How high is the tax and how is it calculated?

The basic rule is as follows: share issuance stamp tax is levied at a rate of 1% of the market value of the capital contribution. Where the contribution is made in return for the issue of participation rights, the amount of the share issuance stamp tax itself, in addition to notarisation and commercial register charges, may be deducted from the amount liable to tax.

In the special case of a shell company transaction, share issuance stamp tax is levied at a rate of 1% of the company’s net assets at the time the shares were transferred, or if higher 1% of the nominal value of all existing participation rights.

When, how and by whom must share issuance stamp tax be declared and paid?

The entity liable for the share issuance stamp tax is the company that received the capital contribution. The company is also responsible for declaring and paying share issuance stamp tax. Shareholders do not owe share issuance stamp tax and are also not liable for it.

The deadline for declaring and paying share issuance stamp tax is as a general rule 30 days after the end of the quarter in which the equity was created or registered with the commercial register. This should therefore be taken into account within liquidity planning, in particular in relation to contributions in kind.

What exemptions are applicable?

The law provides for various exemptions from share issuance stamp tax, the most important of which are as follows:

- An allowance totalling CHF 1 million for company incorporations and capital increases, provided that the capital contribution is used to create nominal capital (whatever the ratio of nominal value to premium).
- Tax exemptions for transactions that constitute qualified restructuring arrangements for tax purposes.
- Contributions in kind of participation rights amounting to at least 10% made between legal entities. The tax exemption only applies if such exempt investments are made by natural persons in the event of a so-called “quasi merger”: this requires, amongst other things, the issue of additional participation rights by the investee company.
- An allowance totalling CHF 10 million for financial restructuring measures (see further our Tax Update of 22 March 2020).
- The possibility to request a waiver of share issuance stamp tax in situations involving hardship. This is relevant in particular in the event of financial restructuring measures, where they involve amounts greater than the CHF 10 million allowance.

Are any changes in the law planned in relation to share issuance stamp tax?

A currently impending change in Swiss corporate law envisages granting the boards of directors of companies the opportunity to alter the capital inside a band (the capital band) within a period of up to five years without any resolution of the general meeting (see further our Legal Update of 2 March 2021). Under this scenario, share issuance stamp tax would only be levied on a qualifying amount of net additional capital created.

In the summer of 2021 Swiss lawmakers voted to abolish share issuance stamp tax entirely. However, this is politically controversial, and would first have to be confirmed in a popular referendum (planned for 13 February 2022). Share issuance stamp tax could therefore only be abolished from 1 April 2022 at the earliest.

What action should be taken?

Whenever a Swiss or Liechtenstein company creates equity capital, it is necessary to consider whether share issuance stamp tax will be payable. In such cases, it is necessary to examine whether the transaction could be structured in such a way as not to trigger any share issuance stamp tax or to fall within the scope of a tax exemption.

No legal or tax advice

This legal update provides a high-level overview and does not claim to be comprehensive. It does not represent legal or tax advice. If you have any questions relating to this legal update or would like to have advice concerning your particular circumstances, please get in touch with your contact at Pestalozzi Attorneys at Law Ltd. or one of the contact persons mentioned in this legal update.

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