

Swiss international tax law (including treaties)

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Dr. Silvia Zimmermann outlines the impact of Switzerland's considerable international connections

Introduction

Double taxation treaties

Switzerland has an extensive treaty network. It has concluded treaties in order to avoid double taxation with almost 90 countries. Many of the treaties include also net wealth taxes. Treaties have precedence over the Swiss national tax law.

Swiss national rules applicable to international situations

The Swiss national tax law also includes rules applicable to international situations. If no explicit international rule is stated, then the inter-cantonal tax rules apply. Due to the importance of cantonal tax laws, there exists an extensive practice related to inter-cantonal taxation. Such practice is also forming the bases for international situations.

Taxation of companies

Double taxation treaties

Most double taxation treaties basically follow the rules

of the Organisation for Economic Cooperation and Development (OECD) model convention. Depending on the treaty, however, deviating special rules may be applicable. The treaties with the US and Germany contain many of these special rules, which deviate from the OECD model convention.

In the Savings Agreement between Switzerland and the EU, the Parent-Subsidiary Directive, as well as the Interest-Royalty Directive, is embodied in a similar form. The only restriction thereby is that the Savings Agreement of 2004 does not hold that changes to such directives are also applicable to Switzerland.

Swiss national abuse rules

Swiss national tax law contains a set of treaty abuse rules dating back to 1962. These very schematic rules have been modified over time. In the August of 2010, the Federal Tax Administration expressed its intention not to apply these abuse rules where the treaty itself contains an abuse provision.

LIST OF SWISS DOUBLE TAX TREATIES

Treaties					
Egypt	Germany	Iceland	Lithuania	Pakistan	South Africa
Albania	Ecuador	Israel	Luxembourg	Philippines	Thailand
Algeria	Ivory Coast	Italy	Malaysia	Poland	Trinidad & Tobago
Armenia	Estonia	Jamaica	Morocco	Portugal	Czech Republic
Azerbaijan	Finland	Japan	Macedonia, Rep. of	Romania	Tunisia
Australia	France	Canada	Mexico	Russian Federation	Ukraine
Bangladesh	Ghana	Kazakhstan	Moldova, Rep. of	Sweden	Hungary
Belarus	Greece	Kyrgyzstan	Mongolia	Serbia	United States
Belgium	Great Britain	Korea, Rep. of (South Korea)	Montenegro	Singapore	Uzbekistan
Bulgaria	India	Croatia	New Zealand	Slovakia	Venezuela
Chile	Indonesia	Kuwait	Netherlands	Slovenia	Vietnam
China	Iran (Islamic Republic of)	Latvia	Norway	Spain	Qatar
Denmark	Ireland	Liechtenstein	Austria	Sri Lanka	
Signed Treaties (not yet effective)					
Argentina	Georgia	Hong Kong	Colombia	Malta	Tajikistan
Turkey	Uruguay				
Initialed Treaties (not yet signed)					
Costa Rica	Korea, Democratic People's Rep. (North Korea)	Oman	United Arab Emirates	Zimbabwe	

Participation exemption

A participation exemption or at least a reduction is granted for income from qualifying participations. This is regardless of whether a treaty exists with the relevant country. Therefore, such relief is available also in cases where the Swiss entity holds a participation in an offshore legal entity.

Tax treatment of foreign permanent establishments

Foreign permanent establishments are exempt from taxation in Switzerland. This is a rule also of our national tax law and thereby is applicable also in cases where no treaty exists. The losses of a foreign permanent establishment can be utilised against Swiss income, provided that such losses have not been compensated in the country of the permanent establishment. If the permanent establishment is thereafter profitable within seven years, Switzerland will tax such profit to the extent that the losses have been deducted in Switzerland.

Immigration to Switzerland

Swiss corporate law allows companies to enter Switzerland in different ways, such as a transfer of residence of the company without liquidation or an international merger. This provided that the foreign country recognises the emigration as well. For tax purposes, a change of the effective management is also a way to subject an entity to unlimited taxation in Switzerland.

Swiss tax law contains a series of tax advantages for entities entering Switzerland. Legal entities are exempt from the issuance stamp tax on stated capital and paid in surplus when moving to Switzerland. Also, starting 2011, whatever shareholders paid as contribution into the company can be paid back without incurring withholding tax. However, certain conditions in this context have to be met.

Emigration from Switzerland

According to its national corporate law, Switzerland allows companies to move out of Switzerland by changing the corporate residence (without liquidation) to a foreign country or to merge internationally. This again provided that the foreign law recognises the immigration to its jurisdiction.

In addition, a company can move its effective management to a location outside Switzerland. In all these cases, taxation as in the circumstance of a liquidation applies. Exceptions exist only where and to the extent a permanent establishment is maintained in Switzerland and the profit allocation is made to the permanent establishment in a way that Switzerland can receive the respective taxes at the later stage.

Taxation of individuals

Exchange of information

A specialty of the double taxation treaties concluded by Switzerland was, up to the year 2010, the restrictive exchange of information. Switzerland has, however, expressed its intention to now accept the Organisation for Economic Cooperation and Development model in this respect if a country wishes to change its treaty accordingly.

Individuals working in Switzerland

----> **Source tax:** Non-Swiss individuals working in Switzerland, provided that they hold a B permit, are subject to a source tax on their income from dependent services.

----> **Expatriate deductions:** Qualifying expatriates seconded to Switzerland on a temporary basis benefit from additional special deductions for the cost of relocation, accommodation and schooling of children.

Individuals not working in Switzerland – lump sum taxation

Foreign nationals not working in Switzerland can subject themselves to a tax based on expenses (the exception is the canton of Zurich). The amount of expenses subject to taxation has to be agreed with the canton where the individual takes up residence. Some double taxation treaties contain restrictions of treaty benefits regarding these individuals or, under certain circumstances, do not recognise their Swiss tax residence.

Allocation of debt and interest thereon

Double taxation treaties usually do not contain any rules regarding the allocation of debt and of interest paid thereon. Switzerland, in the case of a Swiss resident individual holding real estate abroad, allocates debt according to the ratio of overall gross assets to the assets (real estate) allocated to the foreign country. For interest on debt, the same proportions are applied.

Estate tax treaties

Switzerland has concluded 10 estate and inheritance tax treaties. Such treaties do not also cover gift taxes. Each of the treaties contains specialties, the most important one being in the treaty with the US. This states that US securities have a US situs (location) and are therefore subject to US estate tax. No relief is thereby granted for individuals resident in Switzerland.



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瑞士国际税法 (包括双边税收协定) 概览

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本文简要介绍了瑞士广泛的国际经济联系所具有的影响力

简介

双边税收协定

瑞士拥有广泛的双边税收协定网。通过与近90个国家签订双边税收协定,避免了双重征税。其中一些协定还涵盖了净财富税。双边税收协定优先于瑞士国内税法适用。

适用于国际环境的瑞士国家准则

瑞士国家税法中的部分准则适用于国际环境。如果未明确具体适用的国际准则,则适用州际税

则。因州一级税法的重要性,因此,在实践中,州际税有着广泛的应用。这一做法同样构成了国际法规的基础。

企业税

双边税收协定

绝大多数双边税收协定基本上遵循经合组织(OECD)协定范本中的规定。但是,根据协定的内容,可能会适用不一致的特殊规定。与美国和德国的协定含有一些特殊的规定,这些规定与经合组织的协定范本有出入。

瑞士双边税收协定国

协定签署国					
埃及	德国	爱尔兰	立陶宛	巴基斯坦	南非
阿尔巴尼亚	厄瓜多尔	以色列	卢森堡	菲律宾	泰国
阿尔及利亚	象牙海岸	意大利	马来西亚	波兰	特立尼达和多巴哥
亚美尼亚	爱沙尼亚	牙买加	摩洛哥	葡萄牙	捷克共和国
阿塞拜疆	芬兰	日本	马其顿共和国	罗马尼亚	突尼斯
澳大利亚	法国	加拿大	墨西哥	俄罗斯	乌克兰
孟加拉国	加纳	哈萨克斯坦	摩尔多瓦共和国	瑞典	匈牙利
白俄罗斯	希腊	吉尔吉斯斯坦	蒙古	塞尔维亚	美国
比利时	英国	韩国(南韩)	黑山	新加坡	乌兹别克斯坦
保加利亚	印度	克罗地亚	新西兰	斯洛伐克	委内瑞拉
智利	印度尼西亚	科威特	荷兰	斯洛文尼亚	越南
中国	伊朗	拉脱维亚	挪威	西班牙	卡塔尔
丹麦	爱尔兰	列支敦士登	奥地利	斯里兰卡	
已签署协定但尚未生效的国家和地区					
阿根廷	格鲁吉亚	香港(中国)	哥伦比亚	马耳他	塔吉克斯坦
土耳其	乌拉圭				
已草签协定但尚未正式签署的国家					
哥斯达黎加	朝鲜(北韩)	阿曼	阿拉伯联合酋长国	津巴布韦	

在瑞士与欧盟签订的存款协议中，以同样的方式采用了《母子指令》和《利息和版税指令》。对此，唯一的限制性条件是“存款协定2004”不认可指令的修改同样适用于瑞士。

瑞士国内法防止滥用税收协定的法规

瑞士国家税法含有一系列有关防止滥用税收协定的规定，最早可追溯至早在1962年。这些极有示意性的规定经历了多次修改。2010年8月，瑞士联邦税务局表示，因协定本身含有滥用条款，国家税法将不予采用。

参股免税

参股免税或减税适用于合资格投资取得的收益。无论是否与相关国签订有税收协定，此条款均适用。因此，这些免税待遇还适用于瑞士企业参股离岸法人实体的情况。

外国常设机构享有的税收待遇

外国常设机构在瑞士享有免税待遇。此规定与瑞士国内税法一致，因此，在没有双边税收协定的情况下同样可适用。如果外国常设机构在瑞士经营亏损，且常设机构所在国未提供补偿，则此亏损可在计算瑞士所得时使用。如果常设机构在之后的7年内盈利，则瑞士将对此利润征税，直到扣除完此亏损为止。

赴瑞开办企业

瑞士公司法允许企业以不同的形式进入瑞士，如：变更公司注册地，同时不涉及任何流动性或国际企业兼并。反过来，此规定同样适用于企业获得目的国认可后迁出瑞士的情况。为税收之目的，通过调整有效管理层，企业亦可适用瑞士无限制税收规定。

瑞士税法对进入瑞士的公司提供了一系列的税收优惠待遇。公司迁往瑞士时，免缴申报资本和股票溢价发行印花税。此外，从2011年开始，无论股东以何种形式出资，均可汇回本国，而不必缴纳预扣税。但是，此种情况必须满足特定的条件。

公司迁出瑞士

根据瑞士国内公司法规定，在瑞士，公司通过变更公司注册地（不必发生资本流动），即可从瑞士迁往其他国家或进行国际并购，只要国外法律认可这种企业“移民”行为。

此外，企业还可以将有效管理层迁往瑞士以外的其他地区或国家。所有上述情况下，如果发生资本

流动，则需要缴纳相应的税费。但在瑞士设有常设机构、并且这一常设机构的得到的利润分配随后可在瑞士分别纳税的情况除外。

个税

信息交换

瑞士执行双边税收协定的一个特别之处是，2010年前只进行有限的税收情报交换。瑞士政府表示，如果税收情报交换国希望对已签订的双边税收协定进行相应的修改，瑞士可接受执行经组织的模式。

在瑞工作的个人

→ **源泉税**：非瑞士籍人员在瑞士就业的，如果持有的是B类许可证，则需要对来自于依赖性服务的收入征收源泉税。

→ **流亡人员减免**：符合条件的临时赴瑞流亡人员可享有重新安置、住宿和子女上学等特殊优惠政策。

在瑞士居留的非工作人士——定额税

在瑞士居留的非工作外籍人士须根据支出情况纳税（苏黎世除外）。应纳税额执行居留所在行政区的标准。但有些税收协定对这些个人的税惠有限条件，或者，在某些情况下，不将他们视为瑞士本地纳税人。

债务与利息的分摊

双边税收协定通常不对债务和利息的分配进行规定。如果瑞士居民在海外拥有地产，则瑞士将按照总资产与分配到国外的资产（地产）之比来分摊债务，并按此比例收取债务利息。

不动产税协定

瑞士已签订了10份不动产和继承税协定，但协定中不包括赠与税。每一份协定均含有特殊的具体规定，最重要的一份是与美国签订的协定。协定中规定，美国证券的地点在美国，应缴纳美国不动产税。居住在瑞士的个人不享有免税待遇。



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