

## Briefing February 2019

# Swiss withholding tax: New flexible administrative practice for non-Swiss bonds issued under Swiss parental guarantee

A practice note published by the SFTA on 5 February 2019 adopts a highly welcome loosening of the conditions under which bonds/debentures may be issued by non-Swiss borrowers under a guarantee of a Swiss parent company without triggering Swiss federal withholding tax on the interest payments.

Long-standing administrative practice of the Swiss Federal Tax Administration (SFTA) likens "bonds/debentures" issued by a non-Swiss resident issuer with a guarantee from its Swiss resident direct or indirect parent to a bond/debenture issued in Switzerland, for federal interest withholding tax, if certain parameters (as described below in more detail) are met.

A practice note published by the SFTA on 5 February 2019 adopts a highly welcome loosening of the conditions under which bonds/debentures may be issued by non-Swiss borrowers under a guarantee of a Swiss parent company without triggering Swiss federal withholding tax on the interest payments ("deemed Swiss bond/debenture"). The new practice takes immediate effect.

According to the previous practice rules, interest on bonds/debentures issued by non-Swiss borrowers were likened to a Swiss-issued bond/debenture, if the following conditions were cumulatively met:

- 1) The bond issued by the non-Swiss debtor is guaranteed by a direct or indirect Swiss parent company by way of a down-stream guarantee (according to long-standing administrative practice, guarantees provided by other group companies – so called up- and cross-stream guarantees – are not considered harmful as Swiss statutory law limits the validity of such guarantees to freely distributable reserves of the guarantor);
- 2) the proceeds from the issuance of the bond/debenture are directly or indirectly on-lent to one or more Swiss affiliates of the foreign issuer; and
- 3) such on-lending to Swiss affiliates exceeds the foreign issuer's accounting equity (as calculated under IFRS rules) at the issuer's year-end closing date.

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The new practice note introduces a more flexible approach in relation to point 3) above, while the other two criteria remain unchanged. Under the revised rules, a flow-back of proceeds from the foreign bond/debenture issue to Swiss affiliates is allowed (without triggering a taxable "Swiss bond/debenture") up to the sum of:

- 1) the combined accounting equity of all non-Swiss subsidiaries directly or indirectly controlled by the Swiss parent company (so-called "equity alternative"); in the event that a non-Swiss subsidiary is owned less than 100%, its equity is taken into account on a pro-rata basis; plus
- 2) the aggregate amount of loans granted by the Swiss parent and its Swiss subsidiaries to non-Swiss subsidiaries (so-called "compensation alternative").

Companies willing to apply the new practice are required to file an advance tax ruling request with the SFTA. The request must provide details regarding the method to calculate the aggregate equity under the equity alternative and the aggregate lending under the compensation alternative. Further, it has to describe the review and auditing process for the SFTA to verify the relevant amounts. Once a review method has been mutually agreed upon, it must be maintained by the taxpayer (principle of continuity).

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