Swiss Tax Newsletter - May 2017

Highlights

Comments on selected decisions recently rendered by Swiss courts

- Tax treatment of trusts for transfer stamp tax purposes
- Refund and statute of limitation in the field of withholding tax on dividends
- Denial of the exemption of a charitable association supporting religious organizations
- Effective place of management of an offshore entity owning a boat
- Application of the “tax shield” in Geneva

Important legislative developments since the beginning of the year

- Application for an upfront reduction on the withholding tax on intra-group dividends: no more rejection for late submission of the form and refund of late interest payments for past cases
- Cash pooling activities: Swiss parent companies can now secure foreign bonds, subject to certain conditions

I. Selected recent case law

1. Investment in a trust - Transfer stamp duty - Supreme Court decision of 7 March 2017 (2C_996/2015), planned for official publication

A Swiss pension fund was offered by a US bank the possibility to invest into Common Trust Funds (CTF). For this purpose, the Swiss pension fund had to set up a revocable and discretionary trust relationship, whereby the US bank operated as trustee and the pension fund remained the main beneficiary of the trust. The bank then invested into CTF, which are potentially subject to the transfer stamp duty. In 2003, the pension fund obtained however a ruling from the federal tax administration (FTA), confirming that purchases and sales of CTF units would not trigger the payment of the transfer stamp duty as these transactions were made by the US bank, who, unlike the pension fund, was not a Swiss security dealer. Yet, further to an audit conducted in 2010, the FTA found out that the pension fund had booked the CTF acquired by the bank on its balance sheet. Consequently, the FTA revoked the 2003 ruling with retroactive effect on 1st July 2007. The pension fund filed an appeal, which was rejected by the FTA but accepted by the federal administrative tribunal. The FTA appealed against this decision to the Supreme Court which eventually in favour of the taxpayer.

The issue at stake was whether the CTF should be attributed to the pension fund for the purpose of the Swiss transfer stamp duty or to the bank. Given the circumstances, in the former case, transactions on such assets would have triggered the payment of the tax whereas it would not have in the latter. The Supreme Court confirmed first of all that, subject to tax avoidance, ownership under civil law is decisive for transfer stamp tax purpose. Referring to its case law as well as to the explanatory comments from the Federal Council related to the stamp duty Act, the Supreme Court confirmed that the transfer stamp duty is a formal tax, whose concepts, subject to certain exceptions expressly provided by the lawmaker, are to be construed according to civil law. Accordingly, for transfer stamp tax purposes, the transfer of ownership of securities should be understood from a civil law point of view. As a result, the Supreme Court also rejected the FTA's argument when it referred to its guidelines on the income and wealth taxation of trusts drafted in collaboration with the cantonal tax authorities (circular 30 of 22 August 2007). Indeed, while a revocable trust should be disregarded for income and net wealth tax purposes according to these guidelines, the latter are not relevant in the field of the transfer stamp tax. The Supreme Court also held that the recording of an asset may result from economic control, even in the absence of formal legal ownership.

Based on the provisions of the Hague Convention on the Law applicable to Trusts and on the legal opinion from a US lawyer, the Supreme Court concluded that the trust relationship should be recognised for Swiss private law purposes. Following the doctrine on Anglo-Saxon trusts, it then held that portfolio assets should be regarded as owned by the US bank from a Swiss private law standpoint and hence denied the application of the transfer stamp duty on the transactions made by the US bank on CTF. It hence rejected the appeal made by the FTA. This decision is important as it clarifies that the tax administrative practice developed in relation to the income and net wealth taxation of trusts, which is debated among scholars and which is based on a substance over form approach, is at any rate not automatically applicable when it comes to formal taxes (such as stamp duties) whose interpretation is predominantly governed by civil law.

2. Refund of unduly paid withholding tax – Concept of decision - Supreme Court decision of 21 March 2017 (2C_404/2016), planned for official publication

Based on an audit conducted in a Swiss resident company, the federal tax administration (FTA) came to the conclusion that unjustified expenses incurred during the years 2007 to 2010 and should be treated as constructive dividends and, hence, be subject to the 35% withholding tax. As a result, the FTA sent a letter to the auditor of the company, summarizing the facts and requesting the payment of the withholding tax. This letter did however not take the form of a formal decision, against which an appeal could have been filed. Even though it did not agree with the conclusion of the FTA, the company payed the withholding tax without making any written reservation. Rather, the company clarified later that it did so because it had been set under pressure by the tax inspector and in the hope that a criminal proceeding would not be initiated. Later on, the FTA however launched a criminal proceeding. In the course of this procedure, the Swiss company requested the issue of a formal decision confirming that the payment of the withholding tax on the expenses at stake is due, against which it could file an appeal. The FTA confirmed by way of a formal decision that it would not issue the requested decision, on the ground that the company did pay the withholding tax without any written reservation. The Swiss company filed an appeal against this decision, which was rejected by the FTA and, subsequently, by the Federal Administrative Court (decision of 28 June 2016, A-6341/2015). The Swiss company appealed to the Swiss Supreme Court, which turned down the decision of the lower court.

According to art. 12(1) of the federal withholding tax ordinance (FWTO), "*taxes and interest which have not been set by way of a decision of the federal tax Administration shall be paid back if it is established that they were not due*". In the present instance, the Supreme Court had to deal with the issue of whether or not a decision was rendered in the sense of this provision. In the affirmative, and if it appeared that the withholding tax was not due, it would have to be refunded to the company. Conversely, should such decision have been rendered, no refund would be possible, irrespective of whether or not the payment of the tax was effectively due. In that respect, the reasoning of the Federal Administrative Court was the following: like for VAT, the withholding tax has to be assessed and paid spontaneously by the taxpayer, who has to submit a statement. In the area of the withholding tax, a decision is indeed rendered only in specific circumstances that are listed in the law (art. 41), for ex. when the taxpayer challenges a tax claim. Based on a decision of the Supreme Court dated 1st October 1965, the lower court took the view that the fact of paying the tax without any express reservation does amount to a "decision" in the sense of art. 12(1) FWTO. The Supreme Court ruled however differently. In essence, it considered that the interpretation of the lower court is first of all not supported by the clear wording of art. 12(1) FWTO. Further, the approach of the lower court runs against the purpose of this provision (teleological interpretation), which consists in giving to the taxpayer the possibility to get back withholding tax payments that were made by mistake in the absence of authoritative decision by the FTA. The Supreme Court goes on in specifying that a mistake may occur not only when the taxpayer wrongly believes that an amount of tax is due but also when it is unduly brought to pay the tax by the tax authorities. Hence, the purpose of art. 12(1) FWTO would be jeopardized if the taxpayer would not be entitled to claim a refund for the sole reason that it did not subject to the payment of the tax to an express reservation. In that respect, the Supreme Court made finally clear that its decision of 1st October 1965 invoked by the lower court was rendered prior to the introduction of the current Federal Withholding Tax Act and shall hence be ignored.

As there was no unanimous consent in the doctrine on that point, this decision is to be welcome and brings an important clarification from a practical standpoint. Yet and as mentioned by the Supreme Court, it is worth stressing that that the conclusion would be different in the field of VAT, as the law provides expressly that a tax claim enters into force notably if it is paid without any reservation (art. 43, (1) (b). In addition, withholding tax refunds on that basis should be claimed no later than five years following the end of the year in which the payment is made (art. 12(4) FWTO).

3. Constructive dividend – statute of limitation in the field of the withholding tax - Supreme Court decision of 31 March 2017 (2C_1154/2015), planned for official publication

A Swiss resident company that is part of a group ultimately held by a UK resident individual delivered goods to a third party client. Invoices sent by the Swiss company in 2005 specified that the sales price had to be paid on the bank accounts of two offshore companies held by the group. Based on an audit conducted in the books of the Swiss company, the federal tax administration (FTA) took the view that this resulted in a constructive dividend subject to the 35% withholding tax, whereby the ultimate individual shareholder was held severally liable. On 15 August 2012, the federal authorities launched a criminal investigation and on 15 May 2013 issued a decision assessing the amount of withholding tax due. The Swiss company and the ultimate shareholder filed an appeal against the latter decision on 17 June 2013, arguing that the tax claim was forfeited. Rejected by the federal tax authorities, the appeal was accepted by the Federal Administrative Tribunal (decision of 10 November 2015/A-3060/2015). The FTA appealed against this decision at the Supreme Court.

The Supreme Court reminded first of all that while the Withholding Tax Act (WTA, RS 642.21) provides a general statute of limitation of five years starting at the end of the calendar year in which the tax claim arises (art. 17, para. 1 WTA), time limitations are regulated by the provisions of the Administrative Criminal Law Act (ACLA, RS 303.0) in case of an offence against a federal law such as the WTA. Based on art. 12, para. 4 ACLA, the tax claim is not time barred as long as the statute of limitation applicable to the criminal proceeding did not lapse. With regard to the latter and referring to previous case law, the Supreme Court held that in case of infringement in the sense of the ACLA, the time limit is of seven years, starting on the day the criminal action was committed. In the present instance, the Supreme Court took the view that such action consisted in the Swiss company sending its 2005 financial statements to the FTA, which occurred on the day these documents were handed over to the post office (i.e. on 17 June 2013) rather than on the day they were received by the FTA, as argued by the appellants. Art. 11, para. 3 ACLA further states that the criminal procedure's time limitation is interrupted during the time a litigation process concerning the tax claim is going on. In that respect, the Supreme Court had for the first time in that context to address the issue of when such process did start. In relation to this, the Supreme Court mentioned that the purpose of art. 11, para. 3 ACLA is to enable criminal authorities wishing to continue a judicial proceeding to wait until the decision concerning the tax claim enters into force, so as to avoid the risk that the judicial proceeding is forfeited or that they be compelled to judge on the claim itself. The Supreme Court hence concluded that the litigation process starts on the day the FTA issues an assessment decision, rather than on the day the taxpayer files an appeal as held by the Federal Administrative Court.

The implications of this position in the case at hand were the following: based on art. 17, para. 1 WTA, the tax claim would have been forfeited on 31 December 2012. Yet, due to the fact that the failure to levy the withholding tax could be qualified as an offense against the WTA, the time limitation of the tax claim had to be determined based on the provisions of the ACLA. The latter provides that the tax claim is not time barred as long as the time limitation regarding the criminal proceeding did not lapse, which had to occur seven years after 17 June 2006, i.e. in June 2013. And by issuing an assessment decision on 15 May 2013 (i.e. before the criminal proceeding would become time barred), the FTA managed to interrupt the time limitation of the criminal proceeding (art. 11, para. 3 ACLA) and, in turn, of the tax claim (art. 12, para. 4 ACLA). In addition to clarifying an important procedural point, this decision perfectly illustrates the complex relationships between some federal tax laws and criminal laws.

4. Exemption of a charitable association supporting religious organizations – denial due to limited circles of beneficiaries – Supreme Court decision of 21 March 2017 (2C_835/2016)

On 15 April 2015, the tax authorities of the canton of Thurgau issued a decision confirming the exemption of a charitable association. According to its bylaws, the purpose of the association was to provide financial support to individuals in economic distress, typically children or young adults. Such support could be provided directly or through other trustworthy and state approved organisations. It was furthermore not conditioned to origin, nationality or sex. On 4 March 2016, the cantonal tax authorities revoked its decision of 15 April 2015. The association filed an appeal, which was rejected by the cantonal court and, in the end, by the Supreme Court.

In its decision, the Supreme Court first reminds the conditions subject to which, a legal person may be exempted from direct taxes by reason of pursuing objectives of a public welfare or a public service nature. It then confirmed the position of the cantonal authorities for the following reasons.

The Supreme Court considered first of all that the circle of potential beneficiaries was de facto restricted to beneficiaries belonging to the same religious. Indeed, during the 2013 and 2014 tax years, the association appointed a portion of its financial resources not to individual beneficiaries but to five Jewish-Israeli organisations having objectives similar to the association. Further, one of them which received the biggest contribution from the association mentioned religious education as one of its statutory objectives. According to the Supreme Court, this contravenes one condition for tax exemption, which requires that the circle of potential beneficiaries be opened rather than restricted, for example, to the members of the association (like this is the case for political parties or religious communities, etc). Furthermore, the Supreme Court took the view that the requirement to evidence the effective pursuing of a public welfare objective was not met. Based on the facts gathered by the cantonal court, the association indeed failed to prove that its financial resources were effectively used to support individuals in financial distress rather than accumulated in other charitable institutions.

The conclusions drawn by the Supreme Court stress the fact that great care should be paid not only to drafting the bylaws of a Swiss charity but also to its actual activities. This is especially critical when a significant portion, if not all of the activities are carried out in foreign jurisdictions and/or indirectly through other charities. It is also interesting to observe that the the Supreme Court did not follow one argument of the cantonal court which consisted in rejecting the appeal on the ground the association did not carry out a certain portion of its activities in Switzerland. It however did not expressly exclude it and merely said that the appeal could be rejected for other reasons. According to the published practice of the federal (circular letter 8 July 1994) and cantonal tax administrations (information note from the "Conférence Suisse des Impôts" / "Schweizerische Steuerkonferenz" of 18 January 2008), an exemption by reason of public welfare is not subject to the condition that a portion of the Swiss charity's activities be carried out in Switzerland. In our opinion, the position, which is supported by leading scholarly writing, is the only one which may be supported by the text of federal and cantonal harmonized tax provisions. Indeed, the text of these provisions does not subject an exemption for public welfare or public service to any territorial restriction. Accordingly, as long as the activities are effectively carried out abroad and meet the general conditions imposed by the applicable provisions (which was not the case in this decision), the exemption should be granted. From this perspective, therefore, the scope of the exemption for public welfare is different from the one relating to cultural purposes which, on the other hand, the lawmaker has chosen to subject to a territorial restriction (i.e. only national cultural purposes are favoured).

Finally, let us also mention that the denial of an exemption for public welfare not only has an impact on the entity itself (which becomes ordinarily liable to tax) but also on its donators who are then no longer in a position to deny their contributions.

5. Effective place of administration in Switzerland- Private boat owned through an offshore company - Decision of the Geneva Court of Justice of 11 October 2016 (StR - RF 72/2017, p. 213)

This decision concerns the question of whether an offshore company owning a private boat may be regarded as subject to tax in Switzerland on the ground of its effective administration. In essence, a Geneva resident individual owned a boat moored in Turkey through a wholly owned Guernsey company. In the context of a voluntary disclosure procedure, the individual shareholder reported the shares in the company as well as a constructive dividend, resulting from the fact that the boat was put at his disposal for free. The Geneva tax authorities took the view that the Guernsey company was effectively administered from within Switzerland. In order to dispute the effective management in Switzerland, the taxpayer argued that (i) he was not a member of the board of the directors of the company and (ii) based on an informal agreement, an agent and a captain in Turkey had been appointed to take care of tasks such as administrative and coordination tasks in relation to the ownership, mooring and maintenance of the boat, in line with the statutory purpose of the company. However, expenses relating to the management of the boat were paid directly by the shareholder rather than by the company. The Geneva Court of justice confirmed that the effective place of administration of the company was in Geneva. Decisive in this respect was in essence the fact that the parties were not able to provide a written agreement confirming the day-to-day management in Turkey and that it had not been demonstrated that the payments to individuals in Turkey actually concerned the management of the boat. Even though the amounts at stake in the present instance were relatively limited, this decision provides interesting information with regard to tax risks triggered by offshore structure holding private assets such as yachts and jets.

6. Application of the tax shield in the canton of Geneva - Supreme Court decision of 11 November 2016 (2C_1133/2015)

Due to applying Switzerland's highest wealth tax rate, the canton of Geneva introduced a tax shield in the cantonal tax law (art. 60 LIPP) as from 1st January 2011. It consists in capping the total of the cantonal and communal income and wealth tax rate at 60% of the net taxable income, provided that the net yield from investments amounts at least to 1% of the taxpayer's net wealth. In the case at stake, the income of an individual taxpayer residing in Geneva consisted on the one hand of income subject to tax in Switzerland and, on the other hand, of a French source pension, with regard to which taxing rights were allocated to France based on the DTT with France. The Geneva taxpayer claimed the application of the tax shield, based on the argument that the 60% cap should be applied to the net taxable income over which Switzerland can exercise taxing jurisdiction (i.e. excluding French source pension income). The Geneva tax authorities did not agree and took the view that the tax shield should be applied to worldwide income, which resulted in a higher cap. The Supreme Court confirmed the position of the Geneva tax authorities, arguing inter alia that from the perspective of the ability to pay principle (art. 127, para. 2 of the Federal Constitution), the source of the income is irrelevant and that the taxpayer's global economic situation should be considered. Worth stressing in that respect is the fact that the Court did not exclude the possibility that a different conclusion could be drawn in case taxes levied abroad on foreign source income would put the taxpayer concerned in a significantly worst situation, compared to another taxpayer owning the same wealth and deriving income of the same magnitude, that would be only subject to tax in Switzerland. Similar cases should thus be examined taking this last element into consideration.

7. Constitutional guarantee of ownership (art. 26 of the Federal Constitution) – Confiscatory taxation – Wealth tax in Geneva – Supreme Court decision of 5 January 2017 (2C_826/2015)

The situation addressed by the Supreme Court relates to the income and wealth tax burden of a couple, who owned 50% of the shares in a company. For the 2009 tax year, the couple was assessed on a taxable wealth of CHF 40'260'594 and a taxable income of CHF 205'589, which resulted in a cantonal and municipal tax burden of CHF 444'864 (i.e. 200% of the taxable income). The company availed of significant retained earnings. The taxpayers appealed against the tax authorities' decision, arguing inter alia that their 2009 tax burden was of a confiscatory nature and hence did run against the constitutional guarantee of ownership.

The Supreme Court noted first of all that for wealth tax purposes and according to the federal tax Harmonisation Tax Act (art. 14, para. 1), taxable wealth is determined on the basis of its fair market value. In that respect, cantons avail of a significant freedom to determine the applicable valuation method as well as to decide to what extent the income value shall be taken into consideration. The Swiss Supreme Court also confirmed that referring to the guidelines (circular n° 28) issued by the body grouping cantonal tax authorities ("Conférence Suisse des Impôts" / "Schweizerische Steuerkonferenz") which aim at achieving horizontal harmonisation in that area is appropriate, in line with its previous case law.

The Supreme Court then turned to the constitutional guarantee of ownership and its case law thereupon. While the constitutional guarantee of ownership implies that taxation should not impair the essence of private property and not prevent the taxpayer from building up new capital, whether this is the case should however be examined over a sufficient long period of time, ignoring extraordinary circumstances. In other words, the tax burden may be qualified as confiscatory only if the total of the income and wealth taxes exceeds the income (including the income from the relevant assets) over several tax years. Further, the Supreme Court also specified that, in the present instance, the shareholder's share of retained earnings of the company was taken into consideration for the purpose of determining whether the taxpayer was in a position to build up new capital. The fact that the shareholder did not avail of a majority of the company's equity that would enable him to decide on dividend distributions (as a president of the company, the other shareholder had a decisive say) was not considered relevant. Indeed, the mere fact that the taxpayer did own the share was regarded as sufficient in that respect.

This last point is in our view debatable. In that respect, the Supreme Court seems indeed to go beyond its leading decision in that area (ATF 106 Ia 342), according to which the tax burden shall not be considered as confiscatory in case the taxpayer *voluntarily* gives up his entitlement to a sufficient yield due to personal relationships or with a view to realising a higher capital gain. Furthermore, the taxpayer did obviously not have the aim of selling his shares, as the Geneva Court or Justice expressly acknowledged in its decision of 28 July 2015 (A/2982/2013-ICC) that the company was liquidated in 2013, incurred a significant decrease of profits in 2010 and dismissed several employees during the second semester of 2009.

Also, while in the present instance the company could arguably have distributed some or all of its profits as it obviously availed of enough cash reserves to do so (see decision of the Geneva Court of justice of 28 July 2015) this specific point should in our view be examined on a case by case basis. There might indeed be other circumstances where a company might for instance be compelled, over a certain period of time, to make investments in order to maintain the value and profitability of its business, so that no cash reserves would be available for distribution.

It is finally worth stressing that this decision was rendered in relation to a tax year to which the so-called "tax shield" did not directly apply in the canton of Geneva (see comment on decision of 11 November 2016 / 2C_1033/2015). Yet, we believe that it may still have some significance for other cases, as the application of a tax shield does not prevent the total tax burden to exceed the taxable income in all circumstances. Furthermore, not all Swiss cantons have introduced a tax shield in their tax laws. This being said, this decision is yet another example evidencing the limited scope granted by the Supreme Court to the constitutional guarantee of ownership for tax purposes.

II. Legislative developments

1. Amendment of the Swiss Withholding Tax Act: no more rejection of requests to apply an upfront reduction of the withholding tax on intragroup dividend payments due to late submission of forms – possibility to claim a refund of late payment interest

Dividends paid by Swiss companies are subject to a 35% withholding tax. This tax can be totally or partially refunded based on either Swiss domestic law (Swiss resident shareholders) or on the basis of an international agreement, in particular a DTT (non-Swiss resident shareholders). As a rule, it is up to the shareholder to apply for the refund (so-called “retain and refund” procedure). Yet, in specific circumstances, the payment of the tax may be replaced by a declaration of the dividend to the Federal Tax Administration (FTA) (upfront reduction of the tax). This holds true in the case of intra-group dividends, subject to certain conditions. The procedure varies depending on whether the corporate shareholder is a Swiss or a foreign company. However, in both cases, it includes an obligation to submit to the FTA a form within 30 days following the due date of the dividend.

On 19 January 2011 (2C_756/2010), the Supreme Court ruled that the upfront reduction of tax would no longer be available where the taxpayer fails to comply with the foregoing thirty-day notice. For the Supreme Court this thirty-day period is indeed to be regarded as an absolute and qualified forfeiture period. Therefore, if the Swiss distributing company fails to comply with this deadline, the notification procedure is no longer applicable. Accordingly, the general refund procedure applies, that is, the 35 per cent withholding tax must be levied and a refund subsequently requested. Moreover, since the withholding tax is due, the 5 per cent interest charge for late payment applies.

This judgment and the administrative practice based thereupon led to major uncertainties and was unanimously regarded as excessively penalizing intra-group distributions. Accordingly, a parliamentary initiative was submitted on 13 December 2013 with a view to amend the Withholding Tax Act. This initiative was accepted by the Federal Parliament on 30 September 2016. As a result, new provisions were inserted in the Withholding Tax Act, which entered into force on 15 February 2017. They provide in essence the following:

- With regard to both domestic and cross-border intra-group dividends, failure to submit the above-mentioned form within the 30 days deadline will not anymore jeopardise the possibility to proceed with an upfront reduction of the tax but will only lead to the payment of a fine. The upfront reduction will be granted in that case too, provided that the general conditions governing the refund of the Swiss withholding tax are met and that the fine is paid.
- New provisions will apply retrospectively. As a result, the Swiss companies concerned are entitled to claim the refund of late interest payment, except if related claims are forfeited or if they entered into force prior to 1st January 2011.

- Requests for refund shall be submitted until within a year following the entry into force of the new provisions.

2. Amendment of the Swiss withholding tax ordinance: intra-group financing – bonds secured by Swiss parents will not anymore jeopardize cash pooling activities… subject to certain conditions!

Interest remunerating bonds issued by Swiss debtors are subject to the 35% withholding tax. So are interest paid on deposits by Swiss banks. Until seven years ago, this made Switzerland quite unattractive for cash pooling activities (zero balancing), as deposits received by Swiss companies from foreign group entities could, in certain circumstances, be treated as bonds for withholding tax purposes. In 2010, new provisions were inserted in the withholding tax (as well as stamp duty) ordinance, based on which intra-group deposits shall not anymore be qualified as bonds or a bank deposits. Yet, this was subject to the condition that the Swiss company involved would not secure a bond issued by a foreign entity of the group. This restriction was aimed at ensuring that Swiss groups would not circumvent the Swiss withholding tax based on abusive external financing structures. In these circumstances, Swiss groups were incentivised to transfer financing functions outside of Switzerland.

This issue should have been solved by proposed withholding tax provisions, which aimed at structuring this tax based on the so-called "paying agent" principle. In this case, interest remunerating bonds issued by Swiss companies and paid to foreign entities (beneficial owner) would indeed not have been subject to the withholding tax. Yet, considering that this project was delayed and conscious of the fact that the above-mentioned restriction could bring Swiss groups to transfer other high added value functions abroad, the Federal Council decided to further relax withholding tax provisions dealing with cash pooling as follows:

- The fact that a Swiss company secures bonds issued by a foreign entity of a group will not anymore jeopardize the withholding tax exemption of interest remunerating deposits received by the Swiss entity from foreign group companies, provided that on the date of closing, the foreign entities concerned did not transfer funds to the Swiss company in excess of their own equity.
- If this threshold is exceeded, interest remunerating deposits from foreign group entities will not anymore benefit from the withholding tax exemption.
- Compared to the old provisions, the concept of "group" is extended, as it now includes entities that are only partially consolidated (for ex. joint ventures).

New provisions are applicable as from 1st April 2017. They clearly contribute to increase Switzerland's attractiveness with regards to financing functions. Yet, it is worth stressing that according to the explanatory comments from the Federal Finance Department, the conditions to which the application of the extended withholding tax exemption is subject are no true safe harbour and remain subject to general anti-abuse provisions. In addition, further developments regarding the implementation of the "paying agent" principle in the withholding tax act will also need to be closely monitored.

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