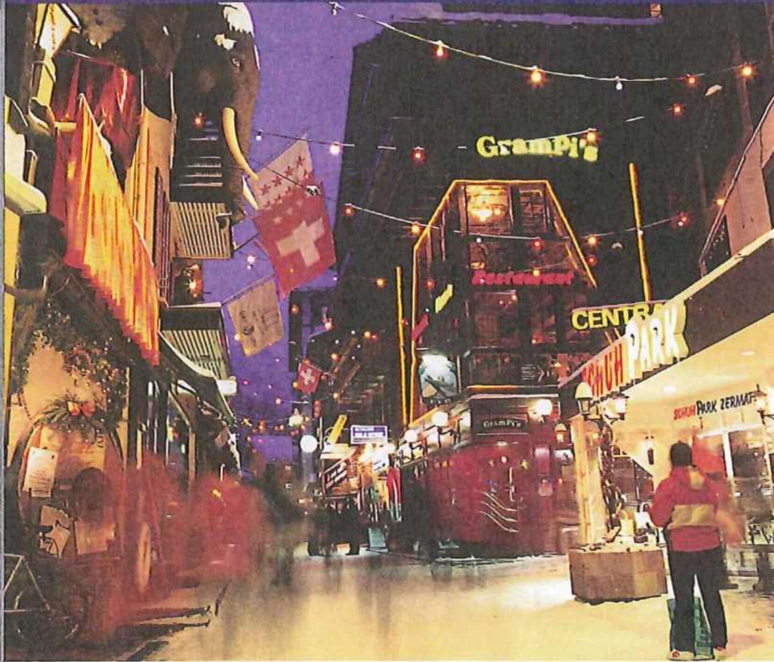

The Hold **Truth**

Daniela Schmucki-Fricker and **Thomas Graf** of Niederer Kraft & Frey explain why Switzerland attracts many international holding companies

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In Switzerland, corporate income taxes are levied on two levels: direct federal tax (DFT) and cantonal and communal tax (CCT). The Swiss Tax Harmonisation Law has brought about some unification of the corporate income tax systems of the 26 Swiss cantons but there are still considerable variations, especially in rates. It is common practice to negotiate the taxation status of a company and the treatment of the company's activities for tax purposes with the relevant authorities in advance. The result is confirmed by the tax authorities in a tax ruling. This is binding to the tax authorities as long as the applicable tax laws and underlying facts do not change.

Direct federal tax

The net income of companies is subject to a flat tax rate of 8.5% (calculated on profit after tax) or 7.83% (calculated on profit before tax). On the DFT level, dividend income is eligible for participation exemption, subject to the following conditions:

- The dividend receiving company holds at least 20% of the share capital of the dividend paying company, or
- the shareholding in the dividend paying company has a fair market value of not less than CHF2m (£830,000).

Capital gains derived from the sale of participations are eligible for participation exemption subject to:

- a holding period of at least one year; and
- sale of a participation of at least 20% of the share capital of another company.

Because participation exemption on capital gains was introduced as of 1 January 1998 by the Corporate Tax Amendment Act 1997, special rules apply for holding companies established before 1 January 1998. Income derived from the additional activities of a Swiss holding company, such as royalties, interest or management fees, is subject to DFT at the rate of 7.83%.

Cantonal and communal taxes

For CCT purposes, holding companies are exempt from income tax, i.e. the total income of the company, whether derived from participations or not, is not subject to income tax. Within limits, this exemption also applies to royalties, interest and management fees. A company qualifies as a holding company if its main statutory and effective purpose is the holding and administration of participations and if at least $2/3$ of the assets or $2/3$ of the income consist of or are derived from participations. The annual capital tax on the equity of a holding company is usually levied at reduced rates of between 0.015% and 0.1%, depending on the canton.

Securities issue and turnover tax

At the formation of a Swiss company and at each subsequent capital contribution, securities issue tax of 1% is levied on the fair market value of the net contribution made to the company. A tax-free amount of CHF250,000 (£100,000) is available. The issue of shares in connection with reorganisations is exempt, provided that specific requirements are met. Securities turnover tax of 0.15% for domestic and 0.3% for foreign securities is levied on the transfer of ownership of securities for valuable consideration, provided that one of the parties involved is a domestic

securities dealer (such as a professional securities dealer or a Swiss holding company which holds participations of more than CHF10m [£4,100,000]). An increasing number of exemptions are however available.

Withholding tax

All ordinary and constructive dividend payments of a Swiss company are subject to Swiss withholding tax at the statutory rate of 35%. Swiss resident shareholders can usually claim a full refund of the withholding tax. Shareholders resident abroad are entitled to a refund of Swiss withholding tax according to the applicable double taxation treaty.

Tax treaty network

Switzerland has double tax treaties with most major countries, which reduces withholding taxes on dividends, interest and royalties. On principle, Swiss holding companies are fully entitled to the benefits of double tax treaties concluded by Switzerland. However anti-abuse clauses and limitations on benefits provisions of the treaty in question and of internal Swiss law must be considered. For substantial participations the nil rate on dividends is currently available based on double tax treaties with the Netherlands, Luxembourg, Sweden, Austria, Denmark and France. It is likely that, with retrospective effect from 1 January 2002, the nil rate will also be available under the Swiss-German treaty.

With a stable tax environment and the extensive advance ruling practice of its tax authorities, Switzerland is a very attractive location for holding structures. Dividends and capital gains derived from qualifying participations are tax-exempt, there is no limitation on tax-deductibility of financing costs, and Switzerland has double tax treaties with many countries worldwide.

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