

Withholding tax and capital contribution reserves

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

Distributions to shareholders raise a separate set of tax questions. Switzerland levies a withholding tax of 35 per cent on dividends paid by Swiss companies. Swiss resident shareholders can reclaim it in full if they declare the income, while foreign shareholders can obtain a full or partial refund under a double taxation treaty.¹ For widely held companies with an international shareholder base such as Roche and Novartis, the withholding tax creates administrative burdens for foreign investors, who must file refund claims, while it also reduces the attractiveness of Swiss equities for some categories of investors. Part E has described how the withholding tax also served as a security instrument against tax evasion by Swiss residents.

The Corporate Tax Reform II, approved by a narrow margin in a popular vote on 24 February 2008 and in force from 1 January 2011, introduced the capital contribution principle. Under this principle, repayments of capital contributions made by shareholders after 1997 are exempt from withholding tax and, for private shareholders, from income tax.² The reform turned out to have far larger effects than the Federal Council had estimated, because many companies, including foreign groups that had moved their headquarters to Switzerland, had substantial capital contribution reserves that they could now distribute without withholding tax. The revenue losses were the subject of considerable political controversy.

STAF restricted the principle for listed companies. Since 2020, a Swiss listed company may repay capital contribution reserves free of withholding tax only if it distributes at least the same amount as a taxable dividend, and it may repurchase its own shares charged to capital contribution reserves only to the extent of half of the repurchase amount.³ For the Basel groups, whose capital contribution reserves arise largely from historical transactions, the restriction has limited practical significance. It

nevertheless illustrates how the reform tied the interests of the cantons, which wanted to protect their tax base, to the interests of the pension system, which benefited from the additional revenue.

Other proposals to reduce the burden of Swiss taxes on capital markets have failed in popular votes. On 13 February 2022 voters rejected the abolition of the issuance stamp duty on equity. Seven months later, on 25 September 2022, they also rejected the reform of the withholding tax on bond interest, which aimed to strengthen the Swiss bond market.⁴ These votes showed that the electorate's scepticism towards tax measures for companies and investors, already visible in 2017, persisted. The pharmaceutical groups, which raise debt capital regularly, as Chapter II described, continue to issue many of their bonds through foreign finance subsidiaries partly for this reason.

1 Notes

1. Federal Act on Withholding Tax of 13 October 1965 (VStG, SR 642.21), Arts. 4 and 13 (rate of 35 per cent) and Arts. 21 ff. (refund to Swiss residents); refunds to foreign residents follow the applicable double taxation conventions. To be verified. ↩
2. Corporate Tax Reform Act II of 23 March 2007, approved in the popular vote of 24 February 2008; capital contribution principle in Art. 5 para. 1bis VStG and Art. 20 para. 3 DBG, in force since 1 January 2011. To be verified. ↩
3. STAF, amendments to Art. 5 paras. 1ter–1sexies VStG and Art. 20 paras. 4–8 DBG, with exceptions for reserves arising from the relocation of companies to Switzerland after 2011 and for intra-group transactions. To be verified. ↩
4. Federal Chancellery, results of the popular votes of 13 February 2022 (amendment of the Federal Act on Stamp Duties, rejected) and 25 September 2022 (amendment of the Federal Act on Withholding Tax, rejected by a narrow majority). To be verified. ↩

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