

Swiss withholding tax and double taxation treaties

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Swiss withholding tax, a 35 per cent deduction levied at source on dividends, interest on Swiss bonds and bank deposits, lottery winnings and certain insurance benefits, is a safeguarding instrument: the Swiss taxpayer who declares this income obtains a refund, while the one who conceals it forfeits the tax. For the financial centre's foreign clientele, the refund depends on the double taxation treaties, of which Switzerland has concluded around a hundred, which reduce the residual withholding on dividends to rates of between zero and fifteen per cent depending on the treaty, and which require a refund procedure whose deadlines and evidence of beneficial ownership form part of the daily work of the banks' tax departments.¹ The 35 per cent rate is among the highest in the world and is a handicap for the Swiss capital market: Swiss issuers issue their bonds abroad to avoid it. A reform that would have abolished withholding tax on bond interest was rejected by the people in September 2022, by a narrow majority, its opponents seeing in it a gift to large investors.²

For the Geneva financial centre, these rules have three consequences. Managers must know, for each client, the applicable treaty and the refund procedure, failing which tax leakage weighs on performance. Holding structures interposed between the client and his Swiss investments, whether companies, foundations or trusts, may forfeit the benefit of the treaty where they are not the beneficial owners of the income, a point that the federal administration and the Federal Supreme Court have clarified in an abundant body of case law.³ And the automatic exchange of information, described in Chapter III, has deprived withholding tax of part of its safeguarding function in relation to foreign clients, whose income is now reported to their State of residence. Its reform will therefore return to the agenda.

1 Notes

1. State Secretariat for International Finance, page “Conventions contre les doubles impositions” (Double taxation treaties) (sif.admin.ch): Switzerland has concluded more than 100 double taxation treaties in the field of taxes on income and wealth, as well as eight treaties in the field of inheritance taxes; the BEPS Multilateral Convention has been in force for Switzerland since 1 December 2019. ↩
2. Federal Council, “Modification de la loi fédérale sur l’impôt anticipé” (Amendment of the Federal Act on Withholding Tax), vote of 25 September 2022 (admin.ch): bill exempting interest on Swiss bonds from withholding tax and abolishing the transfer stamp duty on Swiss bonds; 20 minutes, 25 September 2022: “The ‘no’ to the reform aimed at abolishing withholding tax in certain cases prevailed by a narrow majority of 52%” (52.01% no, turnout 51.7%). ↩
3. ATF 141 II 447 (judgment of 5 May 2015, cases 2C_364/2012 and 2C_377/2012): the beneficial ownership criterion is implicitly contained in Art. 10 para. 1 of the treaty with Denmark; beneficial ownership is denied where the recipient is obliged to pass on the dividends by virtue of contractual obligations or effective restrictions on its power of disposal; refund of withholding tax refused to a Danish bank that had transferred the entirety of the dividends to its total return swap counterparties. The lower court had allowed the refund (Federal Administrative Court, A-6537/2010; Centre de droit bancaire et financier, Neukomm, 27 March 2012, cdbf.ch). ↩

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