

Withholding tax and stamp duty

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Two federal taxes deserve particular attention in the structuring of token projects: the withholding tax and the stamp duties. The withholding tax of 35 per cent applies to distributions of profits by Swiss companies and to interest on Swiss bonds. A token that gives its holders a share in the profits of a Swiss issuer, or that pays interest, can fall within it. The issuer must then deduct the tax from each payment, which is difficult when the holders are anonymous and spread across the world.¹ The issuance stamp duty of 1 per cent applies to the issue of participation rights in Swiss companies above an exemption threshold, while the securities transfer stamp duty applies to transactions in which a Swiss securities dealer takes part.²

These taxes explain why many projects designed their tokens to avoid the characteristics of shares or bonds. A token without a right to profits or interest does not trigger the withholding tax, while a token issued by a foundation does not represent a participation right in a company. The tax ruling that projects obtain before their token sale usually confirms these points. A project that later changes the functions of its token, for example by introducing a distribution of fees to its holders, must reconsider the question.

1 Notes

1. Federal Withholding Tax Act (VStG), Art. 4 para. 1 (object of the tax: income from bonds, shares and participations issued by domestic entities, among others) and Art. 13 para. 1 (rate of 35 per cent on capital income), fedlex.admin.ch. ESTV working paper on cryptocurrencies and ICOs/ITOs (2019, updated 2021): interest on debt-like tokens and distributions on participation-like tokens are subject to withholding tax. ↩

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2. Federal Stamp Duty Act (StG), Art. 6 para. 1 lit. h (exemption for participation rights issued on formation or capital increase as long as contributions do not exceed CHF 1 million in total), Art. 8 para. 1 (issuance stamp duty of 1 per cent) and Art. 16 para. 1 (securities transfer stamp duty of 1.5 per mille for domestic and 3 per mille for foreign securities), fedlex.admin.ch. ESTV working paper on cryptocurrencies and ICOs/ITOs: issuance stamp duty applies to tokens with participation rights, and securities transfer stamp duty to participation-like and debt-like tokens. ↩

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