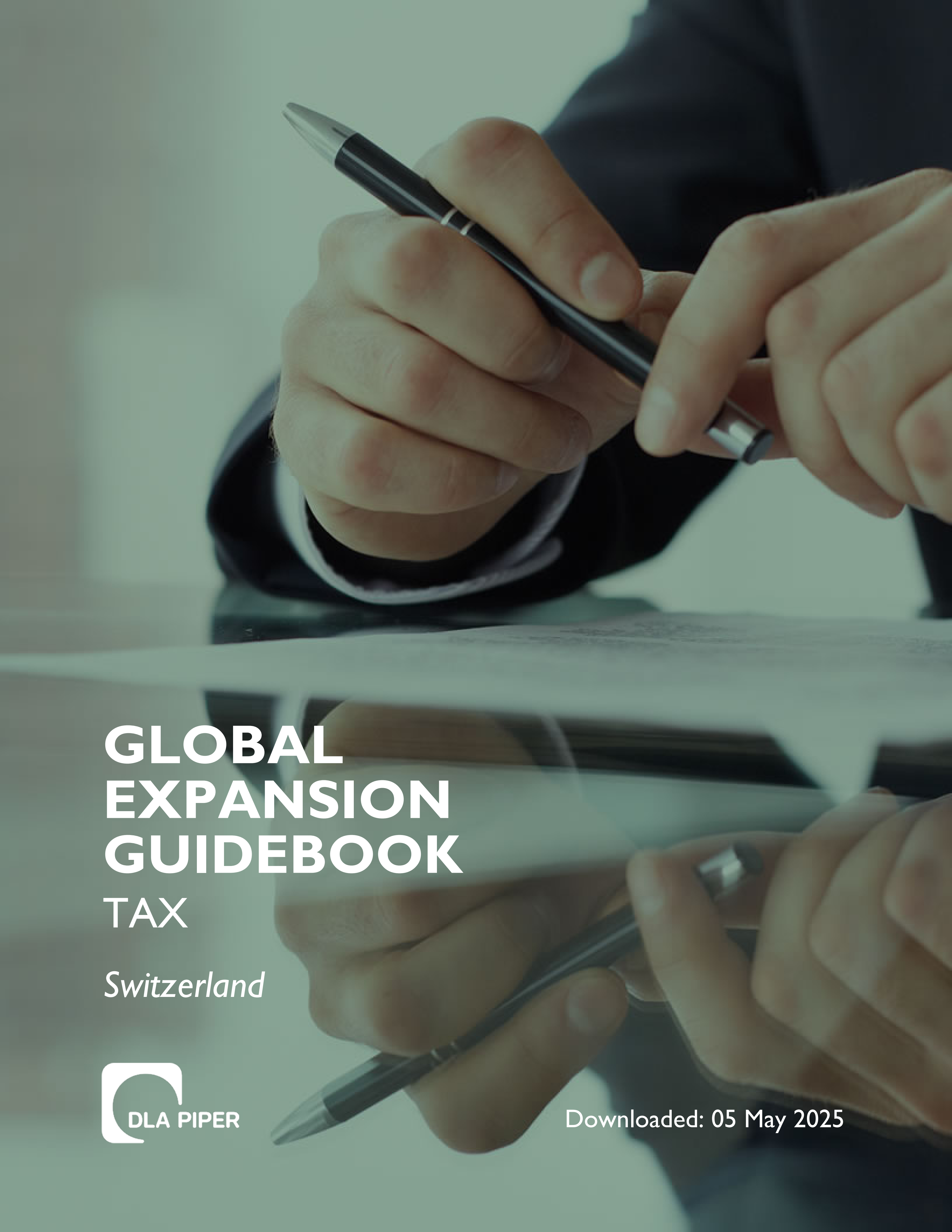

GLOBAL EXPANSION GUIDEBOOK

TAX

Switzerland

DLA PIPER

INTRODUCTION

Welcome to the 2024 edition of DLA Piper's *Global Expansion Guidebook – Tax*.

GLOBAL EXPANSION GUIDEBOOK SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics companies need to know.

The *Global Expansion Guidebook* series reviews business-relevant corporate, employment, intellectual property and technology, global equity and tax laws in key jurisdictions around the world.

TAX

Multinational companies continue to expand globally at an ever faster pace. Successful expansion depends, in part, on strategic and effective tax planning and compliance. This guide, brought to you by DLA Piper's Tax group summarizes the key features of tax laws in 41 popular jurisdictions.

This guide addresses common tax questions, by jurisdiction, including:

- Taxation of resident companies and non-resident companies
- Availability of tax holidays, rulings, and favorable tax regimes
- Ability to use losses to offset income
- Anti-deferral (ie CFC) rules
- Withholding taxes
- Employment tax issues

With more than 300 tax lawyers and economists in offices throughout the Americas, Europe and Asia Pacific, DLA Piper's global tax advisory services help multinational companies address the complex challenges of international commerce and business operations as well as manage and resolve tax audits. Our global tax group also assists clients in structuring a wide range of transactions, from private equity deals to corporate acquisitions and disposals. We provide these tax services across our global platform, while at the same time offering clients the benefits of the attorney-client and work-product privileges.

The information in this guide is an accessible, high-level summary of the tax laws in each jurisdiction. This is not a substitute for legal or tax advice. If you have specific questions or require detailed advice, we encourage you to contact one of the attorneys listed in the contributors section of this guide.

We hope that you find this guide valuable and we welcome your feedback.

SWITZERLAND

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RESIDENCE AND BASIS FOR TAXATION

Domestic

Corporate taxpayers are resident under Swiss domestic tax laws if either their statutory seat or effective management is in Switzerland.

Foreign

Nonresident companies may be subject to Swiss corporate taxation if they:

- Are partners of a business partnership in Switzerland
- Have a permanent establishment in Switzerland
- Own Swiss real estate
- Have claims secured by a mortgage on Swiss real estate or
- Act as brokers for Swiss real estate.

TAXABLE INCOME

Domestic

Resident companies are subject to corporate income tax on their worldwide income with the exception of income attributable to foreign permanent establishments or foreign immovable property. The taxable income is determined based on the statutory standalone Swiss generally accepted accounting principles (GAAP) financial statements. Such income is excluded from the Swiss tax base and is only considered for rate progression purposes in cantons that still apply progressive tax rates.

Foreign

Nonresident companies in general are subject to tax only on Swiss source income (*ie*, income and capital gain derived from Swiss business partnerships, permanent establishments (a fixed place of business through which the business activity of an enterprise is wholly or partly carried out) or immovable property.

TAX RATES

Federal corporate income tax is levied at a flat rate of 8.50 percent on profits after tax (ie, the effective tax rate, or ETR, is about 7.83 percent on profit before tax, since income and capital taxes are deductible in determining taxable income).

In addition, each canton has its own tax laws and levies cantonal and municipal corporate income taxes, generally imposed at flat rates.

As a general rule, the combined effective federal, cantonal and communal corporate income tax rate (ETR) currently varies between 12 to 22 percent on profits before tax, depending on the canton and municipality.

In the future, large, internationally active corporate groups with annual turnover of at least CHF750 million will be subject to the new OECD minimum taxation of at least 15 percent on their profits. If the minimum tax rate of 15 percent is not reached, the shortfall will be levied by means of a supplementary tax. The supplementary tax is a federal tax.

For associations, foundations and other legal entities, as well as collective investment vehicles, lower rates may apply.

Equity tax is levied on a cantonal and communal level. The tax rates currently vary from 0.001 to 0.60 percent. On a federal level, no equity tax is levied.

TAX COMPLIANCE

All corporate taxpayers must file a tax return at the end of their fiscal year.

ALTERNATIVE MINIMUM TAX

In half of the cantons, instead of corporate income tax, a minimum tax is paid, provided such minimum tax exceeds the corporate income tax otherwise due. There are no minimum taxes on a federal level.

TAX HOLIDAYS, RULINGS AND INCENTIVES

Tax holidays

On a federal level, the confederation may provide incentives by way of tax reductions to enterprises which establish themselves in certain areas of the country that are economically underdeveloped. In addition, federal aid may be granted as security on commercial loans or as a contribution to the payment of interest on such loans.

Tax incentives

On a cantonal level, business incentives may be granted for cantonal and communal income tax purposes in connection with new business activities in the canton. Business incentives may be obtained for creating a new presence which has particular economic interest for the canton. The new business activity additionally must not be in direct competition with existing local businesses. Lastly, and perhaps most importantly, business incentives are generally granted in connection with the creation of new local jobs. The number of jobs that must be created to benefit from business incentives is generally quite low (*eg*, beginning at 10 to 20 jobs in most cantons). Business incentives are obtained by negotiation with the competent cantonal authorities. Incentives may include up to a full or partial 10-year tax holiday on a cantonal/communal level as well as low-interest loans on new buildings and easy access to work permits.

Furthermore, as part of the implementation of the corporate tax reform that entered into force on January 1, 2020, Switzerland abolished its tax privileged regulations – in particular, the holding company, the mixed company, domiciliary company, principal company and finance branch regimes that have been considered harmful by the OECD. These regimes have been replaced by new, internationally accepted measures. The key substitute measures for corporate taxpayers are:

- Reduction of general tax rates, whereby the majority of the cantons now have an ETR (*ie*, the effective combined federal-cantonal-municipal rate) between 12 and 14 percent for all companies.
- Introduction of a cantonal patent box system based on the modified nexus approach of the OECD, with tax relief for qualified income of up to 90 percent.
- Introduction of an R&D super deduction at cantonal level of up to a maximum of 150 percent of the effective qualifying expenses.
- Increase of the asset base when a company or its activities and functions migrate to Switzerland.

The expiry of the special tax regulations is subject to transitional regulations, which should make it possible for companies who benefited from such regulations to increase their tax values from before 2020 through a special release mechanism of "hidden reserves" for 5 years after the expiry of January 1, 2020. This depends on the specific facts and circumstances of the companies.

Tax rulings

Tax rulings are available for almost every aspect of taxation, and Switzerland is not subject to EU state aid rules. Under the OECD base erosion and profit shifting project, Switzerland also committed to spontaneous exchange on tax rulings for certain cross-border tax rulings (*ie*, rulings on preferential tax regimes, cross-border transfer pricing rulings, unilateral downward adjustment rulings and tax residency or PE rulings).

CONSOLIDATION

Switzerland does not have a tax consolidation system, and hence separate entity taxation applies for income tax purposes. The Swiss VAT Act provides for group taxation for VAT purposes.

PARTICIPATION EXEMPTION

Participation exemption is a proportional reduction from corporate income tax equal to the net participation income divided by taxable income. Net participation income is defined as the gross participation income from qualifying dividends or qualifying capital gains less related administration and financing costs and any depreciation of the participation that is linked to the dividend distribution or capital gain. In general, participation exemption results in a full exemption of participation income.

Qualifying dividends are dividends from investments representing at least 10 percent of the share capital or 10 percent of profits and reserves of another company or having a market value of at least CHF1 million. There is no requirement that the dividend-distributing subsidiary is liable to income tax in its jurisdiction.

Qualifying capital gains are generally entitled to participation exemption if the following conditions are cumulatively met: (i) the investment sold was owned by the company for a period of at least 1 year and (ii) it constitutes at least 10 percent of the share capital or 10 percent of profits and reserves of the underlying subsidiary.

Note that capital gains are only entitled to participation exemption provided the sales price exceeds the original investment costs. Therefore, previous depreciations on investments may be taxable.

CAPITAL GAIN

There are no special rules applicable other than participation exemption rules and special rules in certain cantons for real estate capital gains.

DISTRIBUTIONS

A federal 35-percent dividend withholding tax is levied at the source on the gross amount of dividend distributions made by Swiss companies. These withholding taxes can be reclaimed or be exempted at source depending on the applicable treaty.

LOSS UTILIZATION

Unused losses can be carried forward 7 years for corporate income tax purposes.

TAX-FREE REORGANIZATIONS

Provided certain prerequisites are met, reorganizations are possible on a tax-neutral basis, as long as the applicable tax accounting values of assets and liabilities remain the same and the assets remain taxable in Switzerland after reorganization.

ANTI-DEFERRAL RULES

Switzerland does not have anti-deferral rules such as controlled foreign corporation (CFC) rules. Note, however, that under recent Swiss court decisions, passive companies located in offshore jurisdictions have been treated as Swiss tax resident, resulting in taxation in Switzerland similar to CFC taxation.

FOREIGN TAX CREDITS

Switzerland primarily applies the tax exemption method in its tax treaties. On certain income streams (dividend, interest and license fees), source tax may be credited against the tax levied in Switzerland.

SPECIAL RULES APPLICABLE TO REAL PROPERTY

Capital gain on Swiss immovable property is subject to a special cantonal real estate gains tax or to ordinary corporate income tax, depending on the system that is applied in the canton where the immovable property is located.

Moreover, about half of cantons levy a special wealth tax on real estate. This tax is due every year in addition to the general wealth tax. The tax is levied at the place where the property is situated and is assessed on the market or taxable value of the real estate without allowing for the deduction of debts. The applicable tax rates are between 0.02 and 0.30 percent.

TRANSFER PRICING

Arm's-length principles generally apply. Switzerland uses the methods published in the OECD Transfer Pricing Guidelines and has no detailed transfer pricing legislation.

WITHHOLDING TAX

Dividends, royalties, interest, rents, etc.

Swiss withholding tax is a federal tax levied on certain types of investment income from Swiss sources, including dividends and interest payments. Royalties, management fees and interest payments on certain loans are in general not subject to withholding tax. The withholding tax is levied at a flat 35 percent rate, subject to reduction under any of the various income tax treaties Switzerland has concluded. Switzerland signed and ratified the Multilateral Instrument (MLI).

Service fees

Service fees are not subject to withholding tax.

CAPITAL DUTY, STAMP DUTY AND TRANSFER TAX

The tax on issued securities (also called stamp issuance duty) is 1 percent of the amount received in consideration for the participation rights, but not less than the nominal share capital with exemption for the first CHF1 million. This exemption is applicable for the establishment of corporations and for increases in capital up to CHF1 million. The tax base is equal to the amount paid in exchange for the remittance of the shares (ie, the nominal value and capital surplus). Issuance stamp tax generally is not due on share issues related to mergers, demergers, relocations to Switzerland or similar transactions.

Transfer stamp tax is levied on the transfer of ownership of certain securities which involve Swiss securities dealers. Swiss securities dealers include banks, fund managers and similar entities, but also ordinary companies that own taxable securities (*eg*, shares or bonds) with a book value of more than CHF10 million. The tax rate is 0.15 percent for Swiss securities and 0.30 percent for foreign securities. Various exemptions apply, and these exemptions must be checked on a case-by-case basis.

In most cantons, the transfer of real estate is subject to a conveyance tax whereas, on the federal level, no taxes of such kind are levied. As a general rule, conveyance tax is assessed on the purchase price or the taxable value of the real estate and is typically paid by the purchaser of the real estate.

EMPLOYMENT TAXES

All B-permit holders and foreign employees with no residence in Switzerland are taxed at source, and the employers must withhold the income tax. All other individuals must fill in a tax return and are subject to tax on their worldwide income if they have their permanent or temporary residence in Switzerland.

OTHER TAX CONSIDERATIONS

Not applicable.

KEY CONTACTS

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