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Fiscal liquidity and restructuring measures

For many businesses, the effects of the Coronavirus crisis create new economic challenges. In addition to the protection of employees, liquidity planning and the management of the balance sheet situation to guard against capital losses or over-indebtedness are moving sharply into focus. The federal government and the cantons in Switzerland have therefore decided on various immediate tax measures for affected companies, which are briefly explained below. In addition, businesses feeling the impact of the virus can consider various restructuring actions, while always being mindful to avoid potential negative tax consequences which could make an already financially strained situation even tougher. In addition, certain tax planning measures can also help to improve the balance sheet and the overall financial situation.

Federal fiscal measures

The Confederation and numerous cantons have now provided for various reliefs in connection with tax payments and social security contributions aimed at strengthening the liquidity of taxpayers.

In view of the current situation, the Federal Council decided on 20 March 2020 temporarily to waive interest for late payments. No interest is due on late payments of VAT, special consumption taxes, incentive /steering taxes and customs duties for the period from 20 March 2020 to 31 December 2020. For direct federal tax, the waiver of interest for late payments applies for the period from 1 March 2020 to 31 December 2020 should taxes become due during this period. It should be noted that withholding tax (on income from shares and other securities, such as dividend income and interest) and stamp duties (issuance stamp duty, securities transfer stamp duty and insurance stamp duty) are excluded from this waiver of interest on late payments and remain subject to the legal default interest rate of 5% p.a. in case of late payments.

The specific tax laws provide for payment facilitations, which are currently favourably reviewed by the tax authorities. If a tax payment within a certain deadline creates considerable hardship, the competent tax authorities may, upon request, grant postponement of payments or the facility to pay by instalments.

In addition, the tax authorities will pay tax refunds and credits without waiting until the usual payment deadlines to help improve the liquidity of businesses and suppliers.

Taxpayers should request an adjustment of their tax bills for advance payments for the current year if it becomes clear that relevant tax factors will be lower than usual. In addition, in the case of direct federal tax, it is now possible to defer provisional bills.

Businesses affected by the Coronavirus crisis can also be granted an interest-free deferral of payment of social security contributions (AHV/IV/EO/ALV). In addition, the regular advance payments to social security authorities can be adjusted if the total amount of salaries paid has fallen significantly. The competent social security authorities will examine each relevant application.

Tax measures to optimise liquidity or balance sheet restructuring / planning measures

Under current legislation, taxpayers already have various measures at their disposal to overcome liquidity and income shortages. In addition to contributions to reserves, waiver of credits, subordination, capital increases and balance sheet revaluations, it may also be prudent to consider adjustments to the group structure, the establishment of VAT groups and the dividend policy.

Contributions from the direct shareholders are generally subject to the 1% issuance stamp duty, with a one-off tax exemption of CHF 10 million if losses are written off to this extent. An unused exemption amount can be claimed in the event of further restructuring(s). As a consequence of the write-off of losses, no capital contribution reserves can be booked which could be distributed later without withholding tax (and without income tax for individual investors resident in Switzerland). Insofar as the exempted amount is not sufficient, in cases of hardship, it will be possible to apply for a remission of the issuance stamp duty although the requirements to do this are much stricter. Partial remissions are also often granted if the relevant conditions are not fully met (e.g. in the case of pre-existing under-capitalisation or where there are hidden reserves). While cash contributions are neutral in terms of corporate income tax, waivers of credits by the shareholder or third parties may lead to taxable income (*echte Sanierungsgewinne*) if and to the extent that they do not qualify as *unechte Sanierungsgewinne*, which are neutral in terms of corporate income tax (only in the case of waivers of credits by shareholders and under certain conditions). Measures made as part of a restructuring to compensate a capital loss (*Unterbilanz*) may also be offset against (still available) tax loss carryforwards (net operating losses) generated outside the regular loss offset period of seven years - in this case, even a waiver of credit with an income effect does not lead to negative tax consequences.

With a simplification of the group structure by means of mergers it may be possible to reduce the running costs per company (accounting, annual accounts, etc.) Furthermore, losses and tax loss carryforwards of one company can in principle also be offset against profits of another company upon the merger, so reducing the corporate income tax burden. The merging of group companies can also lead to cost reductions and a reduction in capital taxes. In the case of companies with foreign bonds guaranteed by domestic parent companies, mergers of foreign subsidiaries should be considered carefully so as not to reduce the amount of the permitted use of proceeds in Switzerland. Transactions or reorganisations at market value with an income effect could be brought forward in times of high losses (or losses whose utilisation is at risk) and serve to improve the balance sheet (possibly also increasing the basis for depreciation, "step up in basis").

During the course of the global Coronavirus crisis, intra-group transfer prices and, in particular, group financing should also be examined to determine whether adjustments are needed. If the creditworthiness of individual group companies suffers at this time, an adjustment of the financing structure may be necessary in line with corporate and tax laws.

For the Swiss corporate dividend recipient, intra-group dividend payments can lead to a reduction of the annual loss as well as tax loss carryforwards. As a result, distributions to companies with losses (carried forward) should , if possible, be avoided or postponed.

If companies have to waive the distribution of dividends (or share buybacks) for liquidity reasons or because of the requirements for emergency loans from the federal government, it is important to implement the correct procedure to avoid any adverse tax consequences.

In principle, the revocation or cancellation of dividends already due does not modify the withholding tax obligation and a waiver of the dividend made by a shareholder would be seen as a contribution and hence would trigger issuance stamp duty consequences. The Swiss Federal Tax Administration (FTA) recently developed an internal practice regarding the cancellation of dividends already declared e.g. for the purpose of receiving – in the current context - emergency loans. In principle, dividends decided upon after 1 February 2020 can be cancelled without tax consequences in individual cases and at the request of the taxpayer, provided that the dividend has not yet been paid out and the withholding tax has not yet been delivered or notified. The FTA reserves the right to make changes to the way this current practice is handled.

Outlook / Conclusion

To preserve liquidity, taxpayers can benefit from immediate measures taken by the federal government, e.g. a temporary waiver of interest on late payments. This applies to direct federal tax as well as to VAT, special consumption taxes, incentive /steering taxes, customs duties and, upon application, also to social security (AHV/IV/EO/ALV) contributions. Most cantons have introduced corresponding measures.

Restructuring measures such as contributions, waivers of credits, revaluations, etc. can lead to corporate income tax and issuance stamp duty consequences and should therefore be properly structured to avoid, where possible, undesirable tax consequences.

There is an expectation that further tax measures, e.g. in the framework of emergency lending, will soon be taken in order to avoid negative tax consequences and to provide further clarity for affected taxpayers. We are at clients' disposal to answer any questions and provide further explanations at any time.

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