Memorandum

To
Interested parties

From
Peter Reinarz

Date
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//pr/transfer stamp duty memo

Re

Swiss Transfer Stamp Duties

I General

The Swiss federal government imposes stamp duties on transfers of certain taxable instruments (essentially, shares bond, notes and similar equity and debt securities) for valuable consideration, when a so-called "Swiss securities dealer" participates in the transaction either as a party or as an intermediary/broker.

1 Taxable securities

Taxable securities include corporate shares, shares in limited liability companies an co-operatives, and profit-sharing certificates (non-voting shares) issued by such Swiss or foreign entities; shares in investment funds; bonds, notes, bank-issued medium-term notes and certificates of deposit; certificates evidencing sub-participation in any of the aforementioned instruments.

2 Swiss securities dealers

Taxable persons (Swiss securities dealers) include banks and bank-like financial institutions as defined in Swiss banking law; investment fund managers; individuals, legal entities and partnerships engaging in the business of trading or

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brokering securities for the account of third parties, as well as any other corporate entities and certain Swiss institutional investors (basically, pension funds and similar institutions) owning taxable securities of an aggregate book value in excess of CHF 10 million as per the last annual financial statements; foreign members of a Swiss stock exchange ("remote members") in respect of Swiss securities traded on such exchange; and the Federal Government, the cantons and political communes and Swiss social security institutions.

As of 1 January 2006, the Federal Government, cantons, political communes and their agencies will only be taxable persons when they show taxable securities in excess of CHF 10 million in their accounts. Foreign companies whose shares are listed on a stock exchange and their consolidated subsidiaries will be treated as "exempt investors", and Swiss social security institutions will cease to be "securities dealers".

Securities dealers have to register themselves with the Federal Tax Administration and file quarterly stamp duty returns within 30 days of each calendar quarter.

3 Tax rates and basis

Generally, the full transfer tax rate amounts to 0.15% of the consideration in the case of Swiss securities and 0.30% in the case of foreign securities. The tax claim arises when the taxable transaction is concluded or completed. The tax subject is the registered securities dealer. Whether the securities dealer can shift the financial burden of the stamp duty to his customer or counter-party depends on the underlying commercial agreements.

Generally, the stamp duty is split into two halves.

- When the securities dealer is a party to the taxable transaction, he has to account for one-half tax for itself and one-half tax for the counter-party who is not a registered securities dealer.

- When the securities dealer is a broker/intermediary, he accounts for one-half tax for each party who is not a registered securities dealer. The dealer is deemed to act merely as an intermediary when he only indicates deal opportunities to the contracting parties, or when he buys and resells securities at identical conditions or on the same day.

4 Exceptions and exemptions

The Stamp Duty Act provides for many exceptions and exemptions in respect of one or both halves of the stamp duty that would otherwise fall due.

<u>Fully exempt transactions</u> include

- Most primary market transactions (issuance of Swiss and foreign equity securities and bonds issued by foreign debtors in a foreign currency, and Swiss investment fund shares, including the firm underwriting of such securities by a bank or investment company and the subsequent allocation of the securities to the first buyer);

- The return of securities to the issuer for cancellation;

- The contribution in kind of securities for the payment of Swiss or foreign shares, limited liability company shares, profit-sharing certificates and investment fund shares;

- The trading of subscription rights;

- The trading of domestic and foreign money market instruments;

- Transfers of taxable securities in connection with a corporate restructuring (transformation, merger, spin-off and similar transactions;

- Transfers of qualified investments (representing an interest of at least 20% in the capital of the underlying company) to a Swiss or foreign corporate entity that belongs to the same consolidated group as the transferor.

<u>Partial exemptions or exceptions</u> apply in the following cases:

- The brokerage and trading of foreign bonds is exempt, to the extent that the buyer or seller is a foreign party (i.e., brokerage of foreign bonds between a Swiss and a foreign party would attract one-half stamp duty).

- Banks and professional traders and brokers are exempt from their own half stamp duty, if they trade securities for or from their own trading portfolio.

- Transactions with foreign banks or foreign stock exchange agents in foreign securities are exempt in relation to the half stamp duty owed for these parties. *As of 1 January 2006, the same half exemption will also apply to domestic securities*.

- Transactions in domestic securities with foreign remote members of a Swiss stock exchange are half exempt (in relation to such parties), when these remote members are trading for their own account.

- Swiss securities dealers are exempt from the half stamp duty owed for the counter-party, when they are members of a foreign exchange and trade securities through such foreign exchange.

- The half stamp duty normally owed for the counter-party is not due, if the counter-party is an "<u>exempt investor</u>" as defined in the Stamp Duty Act:

- Foreign states and central banks
- Swiss and foreign investment funds
- Foreign regulated social security institutions
- Foreign regulated pension fund institutions
- Foreign regulated life insurance carriers (the regulatory level of all these foreign institutions must be comparable with the Swiss level of regulation and supervision by the public regulator)
- *As of 1 January 2006, exempt investors will also include foreign stock exchange-listed companies and their consolidated subsidiaries.*