

**Switzerland**

Bär &amp; Karrer

**Tax cancellation transition period**

**T**he Swiss Federal Supreme Court (SFSC) recently decided in a leading case on the revocation of a Swiss tax ruling which covered a continuing fact pattern.

A Swiss company had a permanent establishment located in the Cayman Islands. In a tax ruling dated August 1999, the Cantonal Tax Administration (CTA) of Zug accepted the Cayman finance branch as a permanent establishment and confirmed the tax exemption of the branch profits in Switzerland. In February 2005, the



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CTA informed the taxpayer on behalf of the Federal Tax Administration (FTA) that as of 2005 this tax ruling would no longer be accepted for direct federal tax purposes.

The Swiss company appealed against this assessment, but the SFSC confirmed on October 5 2012 that the Cayman Islands branch did not qualify as a permanent establishment due to insufficient substance. The SFSC accepted the protection of legitimate expectation of the Swiss company on the basis of the binding ruling issued in 1999 by the competent CTA. But how long after its revocation in February 2005 would the ruling consequently remain binding? How long should the transition period be? The SFSC decided on this question on August 24 2015.

In Switzerland, tax rulings are usually granted without a stated time limitation. Rulings which cover one-time transactions cannot be revoked if the transaction approved in the tax ruling was executed in line with the facts stated in the ruling. For continuing fact patterns like the annual profit allocation to a foreign permanent establishment, a revocation is legitimate if an appropriate transition period is granted to the taxpayer. In the case at hand, the lower court of Zug granted a transition period extending until the end of 2006 during which time the tax ruling would still apply. The SFSC, however, decided that in

view of the lean structure in the Cayman Islands the taxpayer should be able to easily adjust the set up, and consequently granted a transition period extending only until the end of 2005.

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