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Overview of corporate tax work over the last year

Types of corporate tax work

M&A

Despite the ongoing financial and political difficulties in 2022, the number of merger and acquisition (M&A) deals reached the highest level in the last decade. In 2021, there were 604 M&A deals involving Swiss companies with a volume of USD 170bn. In 2022, the number of deals increased to 647 with a total volume of USD 138bn, marking an increase of 7.12% in the number of transactions with Swiss participation.¹ Although the total deal value decreased by USD 31.5bn (-18.5%), the number of deals rose.²

Nearly half of all transactions were in the Technology, Media and Telecommunications (TMT), Industrial Markets, and Pharmaceuticals & Life Sciences sectors, with the most transactions taking place in the TMT sector, totalling 124 deals with a deal volume of more than USD 14.5bn. The Industrial Markets sector had 89 deals with a volume of USD 6.5bn, while the Pharmaceuticals & Life Sciences sector had 82 deals with a volume of just under USD 13bn.

Swiss companies were the buyers in 283 deals, while in 152 deals, Swiss companies were the seller. In 127 deals, Swiss companies were involved on both sides.

The 10 largest deals of 2022 achieved a total volume of around USD 81.5bn, representing approximately 60% of the total volume. The largest M&A deal in 2022 was the acquisition of Firmenich SA by Royal DSM for USD 21bn.³

Environmental, social and governance (ESG) criteria played an increasingly significant role in M&A transactions in 2022, with almost 82% of market players taking them into account. Some companies expressed their willingness to pay up to 10% more if these criteria were met, highlighting the growing importance of sustainability in M&A deals.⁴

IPOs/SPACs

From May to December 2022, a total of 12 initial public offerings (IPOs) took place on the Swiss stock exchange, raising almost CHF 3.4bn in total.⁵ These IPOs involved companies from various sectors, including energy, materials, healthcare, real estate, industrial, and consumer goods.

The Swiss stock exchange also saw significant activity related to the listing of Global Depository Receipts (GDRs) by Chinese companies, which became possible for the first time in 2022 and stems from an official cooperation between the Shanghai Stock Exchange, Shenzhen Stock Exchange and SIX Swiss Exchange on the China-Switzerland Stock Connect programme. In the second half of 2022, a total of nine companies took advantage

of this opportunity, with the largest transaction volume belonging to Jiangsu Eastern Shenghong Co. Ltd., which raised USD 718.3m in 2022.⁶ In the first four months of 2023, four listings of GDRs have been launched already. The transaction volume from May 2022 to April 2023 amounts over USD 4.5bn.⁷

Between May 2022 and April 2023, no Special Purpose Acquisition Company (SPAC) was listed on the Swiss Exchange.

Tax litigation

Switzerland remains a highly sought-after destination for information requests and administrative assistance under various international agreements, including double tax treaties (DTTs), information exchange agreements, and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. As per September 2022, Switzerland conducted the Automatic Exchange of Information (AEOI) with a total of 101 states, including five new ones: Albania; Brunei Darussalam; Nigeria; Peru; and Turkey.⁸ Switzerland provided data to 74 countries, while receiving information from 27 countries. However, Switzerland did not send data to 14 states that have not yet met international standards for confidentiality and data security, or 12 states that voluntarily refrained from exchanging data. Notably, Russia was among the states to which no data was delivered last year. The exchange of tax information with Russia was temporarily suspended on 16 September 2022.

Significant deals and themes

The following M&A deals stood out between May 2022 and April 2023, all requiring tailored and often innovative tax advice for the transaction, integration, or debt financing:

- **UBS to acquire Credit Suisse:** On 19 March 2023, UBS entered into a landmark takeover transaction to acquire 100% of Credit Suisse following discussions initiated jointly by the Swiss Federal Department of Finance, the Swiss Financial Market Supervisory Authority (FINMA), and the Swiss National Bank.⁹ Under the terms of the transaction, Credit Suisse shareholders will receive one UBS share for every 22.48 Credit Suisse shares. The combination will further strengthen UBS's position as the leading Swiss-based global wealth manager (with more than CHF 3.1tn of assets under management) and reinforce its standing as the leading universal bank in Switzerland. The Swiss Federal Council enacted an emergency ordinance to exempt the transaction from shareholder approval and to facilitate timely implementation of the transaction.¹⁰
- **Merger of Dufry and Autogrill:** On 3 February 2023, Dufry entered into an agreement with Edizione, an Italian company, to collaborate with Autogrill to create a new integrated global travel experience. Edizione transferred its entire 50.3% stake, valued at USD 3.9bn, in Autogrill to Dufry in exchange for promissory notes that are mandatorily convertible into a total of 30,663,329 newly issued Dufry shares, with an implied exchange ratio of 0.158 new Dufry shares for each Autogrill share. Completion of the transfer is subject to regulatory approvals, the approval of Dufry shareholders at the extraordinary general meeting, and other conditions. Upon completion of the transfer, Dufry will make a mandatory offer for the remaining Autogrill shares. Edizione will ultimately become Dufry's largest shareholder, and the parties will enter into a long-term relationship agreement.¹¹
- **Philip Morris acquires Swedish Match AB:** On 28 November 2022, Philip Morris Holland Holdings B.V., one of the affiliates of Philip Morris International, announced that it had acquired 93.11% of the shares in Swedish Match, valued at USD 16bn,¹² and intends to initiate a compulsory redemption of the remaining shares and request the delisting of Swedish Match from the stock market. Philip Morris and Swedish Match

share a mutual vision of a smoke-free world, and a firm commitment to developing, scientifically substantiating, and responsibly commercialising smoke-free products that are a better alternative to cigarettes.¹³

- **Spin-off of Accelleron from ABB:** On 3 October 2022, ABB completed the spin-off of Accelleron Industries, which operates ABB's former turbocharger division. Accelleron's shares were admitted to trading on SIX Swiss Exchange in Zurich under the ticker symbol "ACLN" effective as of 3 October 2022. The listing followed approval by ABB shareholders for the spin-off at ABB's extraordinary general shareholders' meeting on 7 September 2022. ABB distributed the Accelleron shares on a *pro rata* basis, as a dividend in kind, with one Accelleron share for every 20 ABB shares held.
- **Royal DSM acquires Firmenich SA:** On 31 May 2022, DSM and Firmenich announced a cross-border merger of equals valued at USD 20.7bn, uniting two iconic companies into a leading creation and innovation partner in nutrition, beauty, and well-being. The new parent company, DSM-Firmenich, will be located in Switzerland and listed on Euronext Amsterdam.¹⁴ The merger will be effected by a public exchange offer, exchanging DSM shares for DSM-Firmenich shares, and the contribution of all Firmenich shares in exchange for DSM-Firmenich shares and a cash consideration. DSM shareholders will own 65.5% of the new Dutch-Swiss group, while current owners of Firmenich will own the rest of the shares and receive EUR 3.5bn in cash.¹⁵ On 8 May 2023, DSM-Firmenich announced that the Firmenich contribution took place, thereby completing the transactions contemplated by the merger of equals between DSM and Firmenich.¹⁶

Key developments affecting corporate tax law and practice

Domestic legislation

Tax-approved interest rates for 2023

On 6 and 7 February 2023, the Swiss Federal Tax Administration published two updated circulars concerning interest rates accepted for tax purposes for advance payments and loans in Swiss francs¹⁷ and in foreign currencies¹⁸ (so-called safe haven interest rates) between related parties for the tax year 2023. For the first time since 2015, the interest rates have been substantially increased for advances and loans between related parties.

For loans in Swiss francs financed with equity by a Swiss company to its shareholders or related parties, a minimum interest rate of 1.5% is required for 2023 (2022: 0.25%). The maximum interest rates for loan payables in Swiss francs granted by shareholders or related parties to Swiss companies were also updated. For operating loans to trading and manufacturing companies, the maximum interest rates are 3.75% for loans up to CHF 1m and 2.25% for amounts exceeding CHF 1m (2022: 3% and 1%, respectively). For loans to holding and asset management companies, the maximum interest rates are 3.25% for loans up to CHF 1m and 2% for amounts exceeding CHF 1m. Separate requirements apply to real estate loans.

For foreign currencies, the Swiss Federal Tax Administration has published the relevant safe haven interest rates in a separate circular. For example, a minimum interest rate of 3% is required for EUR loans in 2023 (2022: 0.5%) and loans in USD must have interest rates of at least 3.75% (2022: 2%). The interest rates for loans in foreign currencies published by the Swiss Federal Tax Administration also apply to loan payables of Swiss companies. To determine the maximum interest rate for loans in foreign currencies, the foreign currency interest rates (e.g. 3% for EUR in 2023) must be added to the spread between the maximum interest rate (loan payables) and minimum interest rate (loan receivables) for advance payments or loans in Swiss francs.

The interest rates are considered safe haven rules, meaning that, when applied, the Swiss Federal Tax Administration assumes that such interest rates are at arm's length, without further justification. The charging of higher or lower interest rates remains possible, subject to the taxpayer justifying that the terms are in line with the arm's length principle.

Update – reform of corporate law in effect since 1 January 2023

The revised Stock Corporation Law reform took effect on 1 January 2023 introducing more flexible formation and capital regulations for stock corporations. The bill includes several new provisions, such as greater flexibility in foundation and capital regulations (capital band), the possibility of foreign denominated share capital and interim dividends, the introduction of gender guidelines, and stricter transparency rules for companies operating in the raw materials extraction sector. This comprehensive revision of the stock corporate law marks the end of a process that began over 10 years ago.¹⁹

Circular Letter No. 29c regarding capital contribution principle

On 23 December 2022, the Swiss Federal Tax Administration issued Circular Letter No. 29c, which covers the tax treatment of repayment of contributions into the equity and share premiums made by direct shareholders after 31 December 1996. The circular states that such contributions or share premiums, also called “CCR” (*Kapitaleinlagereserven*, KER) will be treated like the repayment of share capital or nominal capital, and thus be tax-free for withholding tax (WHT) purposes and for Swiss income tax purposes for Swiss resident shareholders holding the shares as private assets, if the CCR are shown in a separate account on the corporation's commercial balance sheets and any changes to this account are reported to the Swiss Federal Tax Administration. However, a recent decision by the Federal Tribunal (see below) found that this restriction (separate account, reports to Swiss Federal Tax Administration) only applies for Swiss withholding purposes, not personal income tax. The circular has been updated to reflect changes required by the revision of the Stock Corporation Law that came into effect on 1 January 2023. This includes the introduction of the capital band and the possibility to denominate share capital in certain foreign currencies. Other updates relate to the booking of CCR under free reserves, and clarifying the creation of CCR in the event of a resale of equity shares that were already settled for tax purposes.²⁰

Update – WHT and securities transfer tax reform

The “Dispatch on an Amendment to the Federal Act on Withholding Tax (Strengthening the Debt Capital Market)” aimed to abolish the 35% WHT levied on interest payments on a domestic bond, and to abolish the turnover tax on Swiss bonds. However, a referendum was submitted against this bill, and on 25 September 2022, Swiss voters rejected the bill with 52% of votes against it.²¹

Update Swiss WHT – notification procedure

The notification procedure can replace the payment and refund procedure for Swiss WHT on dividends within groups of companies. As of 1 January 2023, this procedure is now available for qualified participations of at least 10% or more, as opposed to the previous threshold of 20%, and is applicable to all domestic legal entities holding such a participation meeting the threshold.²² Additionally, the authorisation request (using forms 823/823B/823C) for the application of the notification procedure in cross-border constellations will now be granted for five years instead of three. The authorisation is valid during this period provided that the relevant facts do not change.

Update Swiss WHT – application of limitation periods for refunds

In its notice dated 13 September 2022, the Swiss Federal Tax Administration clarifies limitation periods for refunds of Swiss WHT. Pursuant to Swiss federal law, the claim for

refund expires if the application is not filed within three years after the end of the calendar year in which the taxable benefit became due. There are currently no provisions on the limitation of the claim for refund. In this respect, the Swiss Federal Tax Administration has clarified that a relative limitation period of five years applies and that it begins when the claim for refund arises.

Increase of VAT rate in 2024

On 25 September 2022, the Swiss voters approved an increase in value-added tax (VAT). As of 1 January 2024, the new VAT rates will come into effect, with the standard rate increasing to 8.1% from 7.7% in 2023. The special rate for accommodations will be 3.8% (up from 3.7% in 2023), and the reduced rate will be 2.6% (up from 2.5% in 2023). The new rates are part of an ordinance to stabilise and fund the old age/social security insurance.

Update implication of international tax developments – OECD Pillars One and Two

The OECD's Pillar Two project is currently a hot topic, aiming to establish a global minimum taxation rate of 15% for multinational groups generating over EUR 750m in annual turnover. For Swiss companies falling under this category, an additional tax will be imposed by the responsible tax authority to make up for any shortfall in effective tax rates below the 15% minimum in a given canton. This will be implemented through a temporary ordinance that is expected to take effect on 1 January 2024, with the law subsequently enacted through conventional means. Parliament approved the constitutional article on the OECD minimum tax in December 2022, and the Swiss electorate will vote on the bill on 18 June 2023.²³

Introduction of new funds category L-QIF

The Limited Qualified Investor Fund (L-QIF) is a new fund category that aims to increase the innovativeness and attractiveness of Switzerland as a fund centre. Unlike other fund products, L-QIF is not subject to FINMA, making it a unique alternative for qualified investors. However, the condition is that such funds are open exclusively to qualified investors (excluding private clients) and are managed by institutions that are supervised by FINMA.²⁴

In terms of tax law, L-QIFs with direct real estate ownership are treated the same way as real estate funds with direct real estate ownership. The bill was passed by the Federal Council in the final votes on 17 December 2021, but the implementation is not expected until at least 1 August 2023. For Swiss WHT, there is no special treatment for distributions and retained profits from L-QIFs. This means that such distributions and retained profits are subject to a 35% Swiss WHT. Currently, this presents a significant barrier to the utilisation of the L-QIF among specific investor groups, particularly foreign investors.

Introduction of tonnage tax

During its meeting on 4 May 2022, the Swiss Federal Council adopted the dispatch on the Federal Tonnage Tax Act. The proposed bill aims to tax the profits from the operation of seagoing vessels at a flat rate based on net tonnage, bringing Switzerland in line with the 21 EU countries that already have such a regulation. This method of determining profit leads to a comparatively lower tax burden for profitable companies, making Switzerland an attractive location for maritime shipping companies. The proposal is largely based on existing tonnage tax regulations in the EU and is voluntary, applicable per vessel.

There are still some unanswered questions regarding the implementation of the tonnage tax. It is expected that the relevant parliamentary commission will continue its discussions on this matter in June 2023. The implementation of the tonnage tax is not expected until at least 1 January 2024.

Domestic case law

Decision of the Federal Tribunal 9C_678/2021 dated 17 March 2023 – income tax-free repayment of hidden capital contributions

A. holds 100% of the shares in B. Ltd. In 2003, B. Ltd. acquired a hotel property in Germany for a total acquisition cost of about CHF 7.2m. However, B. Ltd. only recorded the hotel property in its accounts for about CHF 1.9m, which is about CHF 5.3m below the actual acquisition cost. As part of the purchase agreement, B. Ltd. was to assume mortgage debts of A., but apparently A. later reassumed the mortgage debts without consideration in return. Neither the debt assumption by B. Ltd. nor the reassumption by A. was recorded in B. Ltd.'s account.

In 2015, B. Ltd. was liquidated and the hotel property was sold for about CHF 5.7m. However, its book value at that time was about CHF 3.4m, resulting in a capital gain of about CHF 2.3m. The cantonal tax authority argued that the capital gain of about CHF 2.3m constituted a taxable liquidation dividend in the form of a deemed dividend resulting from a hidden capital contribution from A. to B. Ltd. in 2003.

The Federal Tribunal confirmed that the reassumption of the debt by A. without consideration in return in 2003 constituted a hidden capital contribution. The Federal Tribunal then assessed whether the reassumption of debt without consideration, which in this case is the repayment of a hidden capital contribution, constitutes taxable income (as ruled by the lower court) or whether it constitutes a tax-free repayment from capital contributions. The Federal Tribunal ruled that the distribution of the hidden capital contribution of B. Ltd. to A. Ltd. is not subject to income tax but rather constitutes a tax-free repayment from capital contribution. This ruling contradicts the Swiss Federal Tax Administration's opinion in its Circular Letter No. 29c dated 23 December 2022, para. 3.2. This landmark decision sets a precedent for the repayment of hidden capital contributions for income tax purposes. However, the Swiss WHT consequences were not the subject of the judgment, which means that the repayment of hidden capital contributions is still subject to Swiss WHT.²⁵ Further, it remains to be seen whether and to what extent the decision will be applied by the tax authorities, e.g. only in liquidation cases or also in other scenarios.

Decision of the Federal Tribunal 2C_359/2022 dated 13 September 2022 – tax avoidance and WHT refund

B. Ltd., a company based in Geneva, was indirectly owned by a Canadian citizen residing in London through a Liechtenstein company. The main asset of B. Ltd. was a property in Geneva that had a book value of CHF 5.1m as of 15 November 2013. On 4 December 2013, B. Ltd. was sold for CHF 7.3m to A. Ltd., also based in Geneva. On the same day, A. Ltd. sold B. Ltd.'s property for CHF 18.2m to another party. In the financial statements for the year ending 31 December 2013, B. Ltd. reported a profit of CHF 12.6m.

On 23 October 2015, the ordinary general meeting of B. Ltd. decided to distribute a dividend of approximately CHF 10m to its sole shareholder, A. Ltd. The Swiss Federal Tax Administration refused to allow B. Ltd. the application of the notification procedure for Swiss WHT purposes. Therefore, B. Ltd. was required to pay CHF 3.5m in WHT to the Swiss Federal Tax Administration, and A. Ltd. accordingly requested a refund of the WHT amount. The Swiss Federal Tax Administration rejected the request for refund due to tax avoidance. The complainant pursued the case up to the Swiss Federal Tribunal.

The Federal Withholding Tax Act states that the refund of Swiss WHT may be rejected if it results in tax avoidance. The sale of B. Ltd. to A. Ltd., along with the concurrent sale of

its primary asset, a real estate property in Geneva, with a significant gain was qualified as an unusual legal arrangement. The Federal Tribunal argued that the profit of around CHF 2.5m from the acquisition of B. Ltd. and the subsequent sale of the property and dividend distribution to A. Ltd. suggests that the purchase price for B. Ltd. was determined taking into account the Swiss WHT savings for A. Ltd. This shall lead to the presumption that the structuring of the transaction was mainly chosen to avoid taxes.

If the former shareholder had liquidated B. Ltd. itself, and if the double taxation agreement with the UK (DTA-UK) had been applicable, the legal arrangement would still have resulted in a minimum 15% residual WHT saving for A. Ltd. compared to B. Ltd. However, in the present case, A. Ltd. was not even granted a partial refund of the WHT because the parties involved created a constellation with the sale to a Swiss resident buyer that results in a full denial of the Swiss WHT refund, i.e. precluding the (potential) application of the DTA-UK, which would otherwise allow for a refund of 20% and reduce the WHT burden from 35% to 15%.

Tax climate in Switzerland

General global trends

The global trend led by the G20, OECD and the EU to dry up tax havens worldwide, in particular to demand more taxes from multinational corporations, is still ongoing. As an export-oriented country with a moderate tax level and a small domestic market, Switzerland is used to, and significantly affected by, this global pressure. Privileged tax regimes were abolished in the past and, instead, various business-friendly tax incentives and a substantial reduction of effective corporate income tax rates were introduced. As a next step, the global corporate tax (GloBE) rules according to the OECD Pillar Two with a minimum tax rate of 15% for multinational companies reaching specific thresholds shall be implemented in Switzerland at the beginning of 2024. Switzerland is preparing to introduce a qualified domestic top-up tax in order to avoid foreign jurisdictions applying the minimum taxation (or the undertaken payment rules) on Swiss companies. Further, the possibility of introducing qualifying non-refundable tax credits, which are not detrimental under the GloBE rules, for Swiss companies is currently being analysed by different cantons to keep their attractiveness and use the additional tax revenues that are expected from the qualified domestic top-up tax. The Swiss government is also working on the implementation rules, which are quite challenging in a confederal tax system with 26 cantons. The most disputed point is the allocation of the additional tax revenues between cantons and the federation. Currently, an allocation of 75% to the cantons and 25% to the federation is foreseen. The intended implementation of the GloBE rules is subject to a public vote in June 2023.

WHT avoidance rules: extended international transposition

The Swiss Federal Tax Administration's anti-avoidance practice with respect to Swiss WHT called "extended international transposition" (*erweiterte internationale Transponierung*, EIT) imposes certain restrictions on acquisition structures via Swiss acquisition companies for non-Swiss investors who do not have DTT protection for Swiss WHT purposes such as funds. The rationale behind this practice is to prevent the avoidance of Swiss WHT on distributions from a Swiss target to a Swiss acquisition company that can repay such distributions through shareholder loans or privileged capital contributions reserves to its shareholder who would not have been entitled to receive such distributions from the Swiss target without Swiss withholding burden.

Therefore, at the Swiss acquisition company level, the total amount of share capital plus capital contribution reserves plus shareholder loans must not exceed the amount of share capital plus capital contribution reserves plus shareholder loans of the Swiss target company at the time before acquisition. Otherwise, dividend distributions from the target company to the acquisition company that exceed the amount of share capital plus capital contribution reserves plus shareholder loans at the time before acquisition will be subject to a non-refundable 35% WHT.

The Swiss Federal Tax Administration's EIT practice requires that at least 50% of the equity value (i.e. total funding) shall be financed with "not harmful" funds such as independent financing like bank debt. Equity or loans from shareholders that are fully entitled to Swiss withholding refund or contributions into other reserves will generally also be taken into account for the 50% quota. For transaction security and to avoid negative tax implications, a tax assessment of the acquisition structure on a case-by-case basis, together with obtaining a ruling confirmation from the Swiss Federal Tax Administration, is highly recommended.

Developments affecting the attractiveness of Switzerland for holding companies

In Switzerland, holding companies benefit from an attractive participation deduction for dividends and capital gains. The following subjects are noteworthy:

- When a company transfers its registered office or the place of effective management from abroad to Switzerland, hidden reserves including goodwill ("step-up") may be disclosed without being subject to taxation. As a result, only the net profit generated during the period of tax residence in Switzerland will be taxed and the imported goodwill/hidden reserves (excluded for participations) can be depreciated for tax purposes. The same rules apply if assets or functions of a company resident abroad are transferred to a Swiss company or a Swiss permanent establishment.
- As of 1 January 2020, a new regulation has come into force that allows the cantons to implement means to reduce the taxable equity capital not only for participation rights but also to include a reduction for taxable capital associated with patent rights and loans provided to group companies. This is particularly relevant for holding companies and group financing companies.
- Switzerland still has no intention of introducing controlled foreign corporation rules and remains, with its extensive DTT network, a beneficial location for holding companies.

Industry sector focus

Artificial intelligence

New technologies such as artificial intelligence (AI) offer opportunities but also come with risks. AI is a collective term for methods or systems that can generate predictions through automated evaluation of complex datasets, forming the basis for automated decisions. In the financial sector, AI can be used to fulfil regulatory requirements, and innovative applications such as chatbots or robo-advisory services. Banks have access to valuable customer data, putting them in an excellent position to take full advantage of the AI revolution as digital transformation progresses. AI technologies could generate up to USD 1tn in added value annually in the global banking sector according to McKinsey.²⁶

British company Evident has developed an index that ranks the 23 largest banks in North America and Europe based on their AI competence. According to the "Evident AI Index", an evaluation based on publicly available data from company reports and a range of third-party sources, European banks are in danger of falling behind in the AI race. Only three European banks are among the top 10, and UBS ranks fourth, making it the best European bank overall.²⁷

Despite the benefits of increased efficiency and productivity, better decision-making, and the development of new products and services, the use of AI also carries risks. These include potential discrimination and bias, the danger of systematic manipulation of human actions, the limited traceability that can result in so-called black-box decisions, and the complicated initial situation regarding criminal responsibility or civil liability when using AI. Effectively addressing these risks is a legitimate concern that needs to be taken up at the scientific, political, and legislative levels. The Federal Council has decided on various measures to monitor potential AI developments and to set own accents in Switzerland for dealing with AI in national legislation.²⁸

Sustainability

Sustainability in the financial sector is gaining importance and presents an opportunity for the Swiss financial centre. On 16 December 2022, the Federal Council adopted the report for a sustainable financial centre. With 15 measures for the years 2022 to 2025, the Swiss financial centre should further expand its position as one of the world's leading locations for sustainable finance. The Federal Council also met with leaders of Swiss banks, asset managers and financial sector associations for a roundtable on sustainable finance undermining its increasing importance.²⁹ Further, SIX Swiss Exchange also supports sustainable and responsible development in the financial industry and has been reporting in accordance with the sustainability standards of the Global Reporting Initiative (GRI). Investing is no longer reduced to profitability but an investment's social and environmental impact must be considered.³⁰

The year ahead

Despite the uncertainty and volatility caused by (i) COVID-19 and related supply chain challenges with long-lasting effects, (ii) global tensions such as the war in Ukraine, and (iii) rising interest rates, the M&A market has performed incredibly well over the past two years, breaking records in terms of the number of transactions and deal volume. The mid-term impacts of inflation for the M&A market remain unknown, but inflationary developments are posing difficulties for debt financing, forcing borrowers to reconsider funding sources and involve stakeholders to ensure sufficient financing capacity for successful business activities. Looking ahead, 2023 seems to show slower activity in the M&A market, with price expectations of sellers and buyers often still differing, which results in some transactions being postponed. There is a continuing interest in Swiss software and MedTech companies, while capital market transactions, be it the intended spin-off of Novartis' generic unit Sandoz, the acquisition of Credit Suisse by UBS or potential take-privates, may keep market participations busy in 2023. The current developments in AI and disruptive technological applications are actively promoted in Switzerland and may trigger some M&A activity. From a location perspective, Switzerland will continue working on its attractiveness as a business hub and will, for example, implement the OECD's Pillar Two project for a global minimum taxation rate of 15%, as well as other tax developments, in the most business-friendly way possible.

* * *

Endnotes

1. <https://kpmg.com/ch/en/home/media/press-releases/2023/01/another-record-year-in-swiss-ma-market.html> (last visited 16 May 2023).
2. <https://www.kmu.admin.ch/kmu/de/home/aktuell/news/2023/fusionen-und-uebernahmen-2022-war-ein-rekordjahr.html> (last visited 16 May 2023).

3. <https://kpmg.com/ch/en/home/media/press-releases/2023/01/another-record-year-in-swiss-ma-market.html> (last visited 16 May 2023).
4. <https://www.kmu.admin.ch/kmu/de/home/aktuell/news/2023/fusionen-und-uebernahmen-2022-war-ein-rekordjahr.html> (last visited 16 May 2023).
5. https://www.six-group.com/de/products-services/the-swiss-stock-exchange/market-data/shares/ipo-history.html#tfl_dlc19saXN0=/year/2023 (last visited 16 May 2023).
6. https://www.ey.com/de_ch/news/2022-press-releases/12/number-of-ipos-falls-by-almost-half-worldwide-in-2022-in-switzerland (last visited 16 May 2023).
7. https://www.six-group.com/de/products-services/the-swiss-stock-exchange/market-data/shares/ipo-history.html#tfl_dlc19saXN0=/year/2023 (last visited 16 May 2023).
8. https://www.estv.admin.ch/estv/de/home/die-estv/medien-news/nsb-news_list.msg-id-90593.html (last visited 16 May 2023).
9. https://www.efd.admin.ch/efd/en/home/the-fdf/nsb-news_list.msg-id-93793.html (last visited 16 May 2023).
10. <https://www.baerkarrer.ch/en/news/ubs-to-acquire-credit-suisse> (last visited 16 May 2023).
11. https://www.dufry.com/en/press_release/2023-02-03/combo-between-dufry-and-autogrill-successfully-closed-0#:~:text=On%20February%203%2C%202023%2C%20Dufry,the%20largest%20shareholder%20of%20Dufry (last visited 16 May 2023).
12. <https://www.bloomberg.com/news/articles/2022-11-07/philip-morris-wins-83-acceptance-for-swedish-match-bid#xj4y7vzkg> (last visited 16 May 2023).
13. <https://www.pmi.com/media-center/news/PMI-progresses-toward-sole-ownership-of-swedish-match> (last visited 16 May 2023).
14. <https://www.baerkarrer.ch/en/news/bar-karrer-advises-firmenich-in-its-merger-with-dsm> (last visited 16 May 2023).
15. <https://www.srf.ch/news/wirtschaft/aromastoffe-und-chemie-milliarden-fusion-zusammenschluss-bei-firmenich-und-dsm> (last visited 16 May 2023).
16. <https://www.dsm-firmenich.com/corporate/news/press-releases/2023/completion-of-contribution-of-firmenich-shares.html> (last visited 16 May 2023).
17. <https://www.estv.admin.ch/dam/estv/de/dokumente/dbst/rundschreiben/2023/2-203-dv-2023.pdf.download.pdf/ESTV-Rundschreiben-203-dv-2023-d.pdf> (last visited 16 May 2023).
18. <https://www.estv.admin.ch/dam/estv/de/dokumente/dbst/rundschreiben/2023/2-204-dv-2023.pdf.download.pdf/ESTV-Rundschreiben-204-dv-2023-d.pdf> (last visited 16 May 2023).
19. For more details, cf. *GLI – Corporate Tax 2022*, Switzerland chapter, p. 115 *et seq.*
20. <https://www.estv.admin.ch/dam/estv/de/dokumente/dbst/kreisschreiben/2004/1-029c-dvs-2022.pdf.download.pdf/1-029c-dvs-2022.pdf> (last visited 16 May 2023).
21. <https://www.bk.admin.ch/ch/d/pore/va/20220925/index.html> (last visited 16 May 2023).
22. <https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-88633.html> (last visited 16 May 2023).
23. <https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-93074.html> (last visited 16 May 2023).
24. <https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-90467.html> (last visited 16 May 2023).
25. https://www.bger.ch/ext/eurospider/live/de/php/aza/http/index.php?highlight_docid=aza://17-03-2023-9C_678-2021&lang=de&zoom=&type=show_document (last visited 16 May 2023).

26. <https://www.fuw.ch/die-schweiz-braucht-kein-ki-gesetz-794705355805> (last visited 16 May 2023).
27. <https://www.finews.ch/news/banken/55530-kuenstliche-intelligenz-evident-ai-index-jp-morgan-ubs-zu-den-besten> (last visited 16 May 2023).
28. <https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-88019.html> (last visited 16 May 2023).
29. https://www.efd.admin.ch/efd/en/home/the-fdf/nsb-news_list.msg-id-89161.html (last visited 16 May 2023).
30. <https://www.six-group.com/en/blog/2023/whats-an-esg-index.html> (last visited 16 May 2023).

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