

BRIEFING FEBRUARY 2023

TAX-APPROVED INTEREST RATES 2023 FOR ADVANCES AND LOANS

ON 6 AND 7 FEBRUARY 2023, THE SWISS FEDERAL TAX ADMINISTRATION (SFTA) PUBLISHED TWO UPDATED CIRCULARS RELATING TO INTEREST RATES RECOGNISED FOR TAX PURPOSES FOR ADVANCE PAYMENTS AND LOANS IN SWISS FRANCS AND IN FOREIGN CURRENCIES (SO-CALLED SAFE HAVEN INTEREST RATES) FOR THE TAX YEAR 2023. FOR THE FIRST TIME SINCE 2015, THE INTEREST RATES HAVE BEEN SUBSTANTIALLY INCREASED FOR LOANS IN SWISS FRANCS BETWEEN RELATED PARTIES.

THE INTEREST RATES ARE CONSIDERED SAFE HAVEN RULES, MEANING THAT, WHEN APPLIED, THE SFTA 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.

LOANS IN SWISS FRANCS FROM SWISS COMPANIES (LOAN RECEIVABLES)

For loans in Swiss francs granted by a Swiss company to its shareholders or related parties and financed with equity, a minimum interest rate of 1.5% is now required for 2023 (2022: 0.25%). For loan receivables, the minimum interest rate in 2023 has therefore been increased by 1.25% compared to the previous year.

If such loan receivables are financed by debt, a minimum interest rate consisting of the initial financing costs plus a margin: of (i) 0.5% for loans up to CHF 10 million and (ii) 0.25% for the amount exceeding CHF 10 million. In any case, a minimum interest rate of 1.5% (2022: 0.25%) applies.

If such loan receivables of a Swiss company bear insufficient interest, then the difference between the interest rate required according to the SFTA's circular and the actual interest will be considered as a deemed dividend subject to withholding tax, which will also be recorded for corporate income tax purposes.

LOANS IN SWISS FRANCS TO SWISS COMPANIES (LOAN PAYABLES)

According to the SFTA, the following maximum interest rates are required for loans in Swiss francs granted to Swiss companies by their shareholders or related parties (loan payables):

- > Up to CHF 1 million, a maximum of 3.75% for operating loans to a trading and manufacturing company and of 2.25% for the loan amount exceeding CHF 1 million (2022: 3% and 1% respectively).
- > Up to CHF 1 million, a maximum of 3.25% for loans to holding and asset management companies and of 2% for the loan amount exceeding CHF 1 million (2022: 2.25% and 0.75%).

Separate requirements apply to real estate loans.

If the SFTA considers the interest rate on loan payables to be excessive, the amount of excess interest will be considered as a deemed dividend for withholding tax purposes, which will also be recorded as a deemed distribution of profits for corporate income tax purposes.

LOANS IN FOREIGN CURRENCIES FROM SWISS COMPANIES (LOAN RECEIVABLES)

For the most common foreign currencies, the SFTA has published the relevant safe haven interest rates in a separate circular. The majority of the foreign currency interest rates listed in the circular have been substantially increased: for loans in EUR, a minimum interest rate of 3% will be required in 2023 (2022: 0.5%). Loans in USD must bear interest rates of at least 3.75% (2022: 2%).

LOANS IN FOREIGN CURRENCIES TO SWISS COMPANIES (LOAN PAYABLES)

The interest rates for loans in foreign currencies published by the SFTA also apply to loan payables of Swiss companies. In addition to the foreign currency interest rates (e.g., 3% for EUR in 2023), the spread corresponding to the difference between: (i) the maximum interest rate (loan payables) and (ii) minimum interest rate (loan receivables) applicable for advance payments or loans in Swiss francs, must be added when determining the maximum interest rate for loans in foreign currencies. Example: For operating loans of up to CHF 1 million, the difference between the maximum interest rate (3.75%) and the minimum interest rate (1.5%) results in a spread of 2.25%. A loan payable of EUR 1 million may therefore be subject to a maximum interest rate of 5.25% (foreign currency interest rate for EUR of 3% plus the spread of 2.25%).

In the case of loan payables in foreign currencies, in order to justify the interest expense, the taxpayer must provide proof as to why no advance payment or loan could have been made in (lower interest-bearing) Swiss francs. In any case, the proof of higher interest rates in line with the arm's length principle remains reserved.

CAPITALIZATION INTEREST RATES

For the first time, the two circulars contain a reference to the capitalization interest rates for the valuation of companies and refer for this purpose to circular no. 28 of the Swiss Tax Conference SSK „Wegleitung zur Bewertung von Wertpapieren ohne Kurswert für die Vermögenssteuer“ („Guidelines for the valuation of securities without market value for wealth tax“) and its current commentary. The capitalization rate for valuations in Swiss francs will decrease from 9.5% (valuation year 2021) to 8.5% (valuation year 2022).



IMPORTANCE IN PRACTICE

> Loan agreements between companies and their shareholders or other related parties often contain dynamic interest clauses, i.e., interest clauses with reference to the relevant circulars of the SFTA. As the safe haven interest rates for 2023 have now been substantially increased by the SFTA, we recommend reviewing the compliance of intercompany loan agreements with the tax requirements on a regular basis.

> The reduced capitalization rate results in higher enterprise values for 2022 and therefore increased wealth tax when applying the so-called practitioner method for the valuation of companies.

In individual cases, the adjustments of the interest rates for intercompany loans and capitalization rates may also offer opportunities when it comes to tax planning. Our tax team at Bär & Karrer AG will be happy to assist you with any questions and is available to discuss your individual circumstances.

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