

Bilateral Agreements II : Swiss-EU Savings Tax Agreement (STA)

Relief at source on dividend payments

On 1 July 2005 the Savings Tax Agreement (STA) between Switzerland and the European Community entered into force.

This agreement is directly linked to the EU Savings Directive, through which the EU states want to ensure that taxpayers of one EU state effectively pay tax on interest income earned in another EU state.

As recognition of the concessions made in terms of savings taxation, the EU provided Switzerland with significant fiscal concessions. Pursuant to Article 15 of the Agreement, dividend, interest and royalty payments between associated Swiss and EU resident companies are in general exempt from withholding tax.

Abolition of withholding tax on dividends (STA, Art. 15 Para. 1) :

Cross-border dividend payments between subsidiary and parent companies resident in Switzerland and the EU shall not be taxed in the source state, provided that the following conditions are cumulatively fulfilled :

1. Minimum holding : the parent company has a direct minimum holding of 25% of the capital of the subsidiary for at least two years.
2. Tax residence :
 - a. one company is tax resident in an EU Member State and the other company is tax resident in Switzerland;
 - b. under any double tax agreements with any third (non-EU) states neither company is tax resident in that third state.
3. No tax exemption : both companies are subject to corporation tax without being exempted.
4. Legal form : both companies have the form of a limited company.

Interpretation of certain provisions of the STA by the Federal Tax Administration

In connection with payments from Swiss sources, the Federal Tax Administration has published some guidelines on July 15, 2005. These guidelines refer to art. 15 Para. 1 of the STA, i.e. to dividend payments.

- Territorial Validity : the STA applies – subject to transitional periods for certain EU countries – between Switzerland and the current 25 EU Member States, including the French overseas

territories, Gibraltar, Madeira, Azores and the Canary Islands. The STA will also automatically apply to future EU-Member States (e.g. Bulgaria, Romania).

- Definition "Dividends" : the term "dividends" will be interpreted according to the DTT interpretation (OECD Model Tax Convention). The term comprises in particular open and hidden profit distributions, as well as liquidation payments.
- Holding period : the fulfillment of the two-year holding period may also take place post-distribution (interpretation analogous to the jurisprudence of the European Court of Justice ("ECJ"), the so-called "Denkavit" judgment).
- No tax exemption : a company is deemed to be exempt from corporate tax if it is not subject to corporate income tax at federal, cantonal and communal level. Accordingly the following companies are considered as corporate tax exempt and do therefore not qualify for the benefits of art. 15 para. 1 STA :
 - Companies enjoying a subjective exemption from corporate tax : legal entities mentioned in art. 56 LIFD respectively art. 23 LHID (e.g. legal entities with public, non-profit or cultural objects, pension- and social security Organizations et al).
 - "tax holiday" cases : legal entities, which benefit from a full or nearly full tax holiday at cantonal and federal level.

The cantonal tax status of a holding, mixed or domiciliary company is on the contrary not harmful and such companies may benefit from art. 15 para. 1 STA. Likewise, the participation relief is not harmful either.

- Definition "Limited company" : As far as Switzerland is concerned, qualifying company forms are the AG/SA, the GmbH/SARL and the Kommandit-AG.