

# Swiss Taxation - Update

IFMA

November 16, 2011

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2. Double tax treaties update
3. New Law on tax at source at international level
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# 1. Presentation

## DS TAX CONSULTING SA

### The partners

- Daniel Spitz – Specialist in Corporate tax advice
- Mario Delgado – Specialist in Individual tax advice

### Background

- Ex-Big4
- Focus on taxes only (no « fiduciaire ») [www.dsconsulting.ch](http://www.dsconsulting.ch)
- Able to deal with international issues/constraints
- **Expertise**
- **Quality**
- **Tailor-made solutions**
- **Added value**
- **Fair prices**



# 1. Presentation

## Daniel Spitz

### Profile

- Law Degree, Certified Tax Expert
- 12 years' experience in taxation in Federal Tax administration and Big4 firms (Andersen, Ernst & Young, Deloitte)
- Responsible for the corporate tax department at Deloitte in Lausanne
- 2 years self-employed under the name of DS Tax Consulting (creation of own clients and network)
- Managing Partner at DS Tax Consulting SA

### Tax Consulting ([www.dsconsulting.ch](http://www.dsconsulting.ch))

- **Specialisations** : Tax holidays, special tax status, group taxation, international groups, ownership transfer, due diligence, VAT



# 1. Presentation

## Mario Delgado

### Profile

- Certified Fiduciary Agent
- 10 years' experience in taxation in Canton Vaud, tax and accounting firms (Deloitte and FDZ), industry (Honeywell)
- Managed key clients' accounts at Deloitte in Lausanne
- GMS Manager at Honeywell
- Partner at DS Tax Consulting SA

### Tax Consulting ([www.dsconsulting.ch](http://www.dsconsulting.ch))

- **Specialisations** : International mobility, lump sum taxation, tax planning, employees' incentive plan taxation, negotiation of tax rulings, succession, individual's tax returns.



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## 2. Double tax treaties

Entry in force, a long way...

Initials (confidential)



Consultation / Amendments / Negotiations



Signature (public)



Internal approval (both States)



Entry in force



## 2. Double tax treaties

### Treaties recently (re)negotiated by Switzerland

#### In force

01.01.2010/2011

France (R/eoi)

**Spain** (R/eoi)

**India** (R/eoi)

01.01.2011

Austria (R/eoi)

Chili (N/-)

Denmark (R/eoi)

Finland (R/eoi)

Great Britain (R/eoi)

Luxembourg (R/eoi)

Mexico (R/eoi)

Norway (R/eoi)

Qatar (N/eoi)

01.01.2012

Colombia (N/eoi)

Georgia (N/-)

**!Netherlands!** (R/eoi)

Poland (R/eoi)

Tadjikistan (N/-)

#### Signed

**Canada** (R/eoi)

**Germany** (R/eoi)

**Greece** (R/eoi)

Hong-Kong (N/eoi)

Japan (R/eoi)

**Kazakhstan** (R/eoi)

**Malta** (N/eoi)

**Romania** (R/eoi)

Russia (R/eoi)

**Singapore** (R/eoi)

**Slovakia** (R/eoi)

**South Korea** (R/eoi)

**Sweden** (R/eoi)

Turkey (N/eoi)

**Uruguay** (N/eoi)

**USA** (R/eoi)

#### Initials

Ireland (R/eoi)

Oman (N/eoi)

Peru (N/eoi)

Portugal (R/eoi)

UAE (N/-)

#### In discussion

Brazil

Costa Rica

Lybia...

Senegal

Syria

Taiwan

N = New convention

R = Revised convention

- = No exchange of information based on art. 26 OECD Convention Model

eoi = Exchange of information based on OECD Convention Model

**In red** = DTT with automatic update to the best negotiated clause


**In bold** = DTT close to enter into force

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# 3. Tax at source at international level (LISint)

## Background

- Long time dispute between CH and Germany on non-declared bank accounts in Switzerland of German residents
- Switzerland always opposed bank secrecy
- Exchange of information
- Stolen bank data (CS) sold to German tax authority
- Threat of a new “UBS case”
  - Switzerland forced to negotiate
- Negotiations over with Germany and the United Kingdom (in consultation phase)
- 10 – 15 countries already strongly expressed their interest...

### 3. Tax at source at international level (LISint)

#### Basics of new law

- Create a legal frame for the major exceptions created by the new treaties with Germany and the UK and set the frame for the next treaties
- Same basics as for the EU-savings agreement
- **Not “self-applicable”. Needs a bilateral treaty with a foreign country to spread effects against the tax payers of this country.**
- Introduction of a “tax at source discharge” for any income (capital gains, interest, dividend) generated on assets belonging to a tax payer of the other country
- Introduction of a one-time lump-sum payment to solve the past
- In exchange: the tax payer and information related to his assets remain anonymous
- Self-denunciation instead of tax at source discharge always possible



### 3. Tax at source at international level (LISint)

#### Concretely (UK treaty)

- Tax at source discharge:
  - 48% on interest income
  - 40% on dividends
  - 27% on capital gains
  - 48% on other income
- One-time lump sum payment = (“average” assets) x (19% to 34%)
- If lump-sum taxation is not wished, the tax payer can disclose his assets to the UK tax authority.
- If no taxation at source and/or lump-sum taxation and/or disclosure of assets is wished, the tax payer has to close his accounts in Switzerland.
- Introduction of fishing expedition up to 500 requests per year
- Swiss banks will pre-pay CHF 500 million! (2 billion with Germany)
- In exchange? Nothing concrete...

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## 4. Federal tax practice update – WHT


### Dividend distribution within a group of companies

#### From CH to EU, treaty countries and US

- Declaration procedure available since 2005
- Has to be requested through forms 823
- Dividend has to be announced through forms 103/102/110 and 108 with a **30 day deadline**
- FTA strengthened its position over the last 12 months, requesting payment of WHT if announcement after the 30 day deadline
- **Recent Federal Court decision confirming position of FTA!**
- **Now any dividend distribution will trigger WHT if not announced properly after 30 days, even if authorisation procedure duly in place!!!**



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## 5. Tax Federal tax practice update – Stamp tax

Entry in force on 1.1.2011

### Additional paid-in capital (« Agio »)

- Refund no longer subject to income tax
- Refund no longer subject to withholding tax
- Conditions to fulfil:
  - Mentioned separately in the balance sheet (as “agio”)
  - « Opened » (vs. hidden) additional payment
  - From the shareholder(s)
  - Applicable to additional payments since January 1, 1997

## 5. Tax Federal tax practice update – Stamp tax

Agio - Extremely strict application rules!

### Rules to strictly respect

- Announce any “old” agio within 30 days (max 7 months) after approval of accounts closed in 2011. Otherwise not recognised as agio (-> WHT!)
- File form 170 in due time for each increase of agio reserve. In case of increase only, usually within 30 days after approval of accounts (max 7 months).
- File form 170 for each repayment of agio within 30 days after decision of General Assembly but not later than 30 days after repayment.

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## 6. Taxation of RSU and SOP

### ➤ Entry in force: January 2013

What are the real changes ?

- Exit tax abolishment
- Pro-rata taxation
- Tax at source withholdings for non-residents
- Employer's obligation to collect and pay taxes for non-residents

Already applicable by some cantonal authorities

## 6. Taxation of RSU

### Then (AFC circular no 5/1997)

Shares

- Restriction?

- ❖ No: taxation at grant on full value
- ❖ Yes: taxation at grant on reduced value  
(max reduction of 44% at 10 years)

### Now (new legislation 2013)

Shares

- Restriction?

- ❖ No: taxation at grant on full value
- ❖ Yes: taxation at grant on reduced value  
(6% per year, max 60% reduction)

## 6. Taxation of SOP

### Then (AFC circular no 5/1997)

Stock options (with equity rights)

- Restriction?
  - ❖ No: taxation at grant on strike price
  - ❖ Yes, less than 5 years : taxation at grant on reduced value (max reduction of 25% for 5 years)
  - ❖ Yes, more than 5 years : taxation at exercise (unless real valuation possible at grant)

### Now (new legislation 2013)

Stock options (with equity rights, negotiable)

- Restriction?
  - ❖ No: taxation at grant on full value
  - ❖ Yes: taxation at grant on reduced value (6% per year max 60% reduction)

## 6. Taxation of SOP

### Then (AFC circular no 5/1997)

Stock options (no equity rights acquisition, cashless)

- Restriction?

❖ No: taxation at grant on strike price

❖ Yes: taxation at exercise on strike price

### Now (new legislation 2013)

Stock options ( with equity rights but not negotiable, no equity rights, cashless)


- Restriction?

❖ No: taxation at exercise on strike price

❖ Yes: taxation at exercise on strike price



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# 7. Lump-sum taxation

## Criteria

- Swiss taxation based on family expenditure
- 1st domiciliation or after an absence of 10 years minimum
- Swiss nationals (limited to 1st tax year) Foreigners (no tax year limitation)
- No professional activity in Switzerland possible

## Tax calculation review, tax return

- Investment and property income sourced in Switzerland
- Copyright, royalties, etc
- Pensions from Swiss sources
- Foreign income benefiting from a double tax treaty relief


# 7. Lump-sum taxation

## New legislation

- Minimum lump-sum:
  - CHF 400'000 (LIFD), cantons will set their own minimum (LHID)
  - 7x rent paid or property rental value (5x in the past)
  - 3x pension paid in hotel, etc (2x in the past)
- Swiss nationals no longer benefit
- The Federal law mentions the family expenditures in Switzerland and abroad
- Wealth tax to be included in tax calculation review
- Transition period of 5 years



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