

# Corporate Taxation - Update

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# **1. Introduction**

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# 1. Introduction

## Profile

- Law Degree, Certified tax expert
- 11 years of experience in taxation at the Federal Tax administration and several Big4 firms (Andersen, Ernst & Young, Deloitte)

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

- **Individuals:** Succession, planning, relocation to Switzerland, tax returns
- **Companies:** Tax holidays, special tax status, group taxation, international groups, ownership transfer, due diligence, VAT, tax returns
- **Real Estate:** Individuals, professionals and institutional investors

And more...





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## 2. Double tax treaties

### Background

➔ **2005:** Exchange of information only to ensure correct application of DTT (exception: USA)

**2005 - 2009:** Exchange of information also for cases of tax **fraud** (in case of new DTT and renegotiation of DTT), not for tax evasion!

**2009 - 2010:** Application of art. 26 OECD Convention Model for new DTT and renegotiation of DTT in force

**2010 onwards?** Switzerland currently does not want to apply the automatic exchange of information, but...

## 2. Double tax treaties

Entry in force, a long way...

Initials (confidential)



Consultation / Amendments / Negotiations



Signature



Internal approval (both States)



Entry in force

## 2. Double tax treaties

### Treaties recently (re)negotiated by Switzerland

#### In force

Chili (N/-)

1.1.11

Ghana (N/-)

1.1.10

Bangladesh (N/-)

1.1.10

Algeria (N/-)

1.1.10

South Africa (R/-)

1.1.10

**Spain** (R/eoi)

(automatic!)

#### Signed

Georgia (N/-)

Tadjikistan (N/-)

**Qatar** (N/eoi)

Turkey (N/eoi)

Uruguay (N/eoi)

**Austria** (R/eoi)

Canada (R/eoi)

**Denmark** (R/eoi)

**Finland** (R/eoi)

**France** (R/eoi)

**Great Britain** (R/eoi)

**India** (R/eoi)

Japan (R/eoi)

Kazakhstan (R/eoi)

**Luxembourg** (R/eoi)

**Mexico** (R/eoi)

Netherlands (R/eoi)

**Norway** (R/eoi)

Poland (R/eoi)

**USA** (R/eoi)

#### Initials

Hong-Kong (N/eoi)

UAE (N/-)

Germany (R/eoi)

Greece (R/eoi)

Ireland (R/eoi)

Singapore (R/eoi)

Slovakia (R/eoi)

Sweden (R/eoi)

#### In discussion

Brazil

Colombia

Costa Rica

Lybia...

Malta

Peru

Senegal

Syria

Taiwan

N = New convention

R = Revised convention




- = No exchange of information based on art. 16 OECD Convention Model

eoi = Exchange of information based on OECD Convention Model

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# 3. Exchange of information

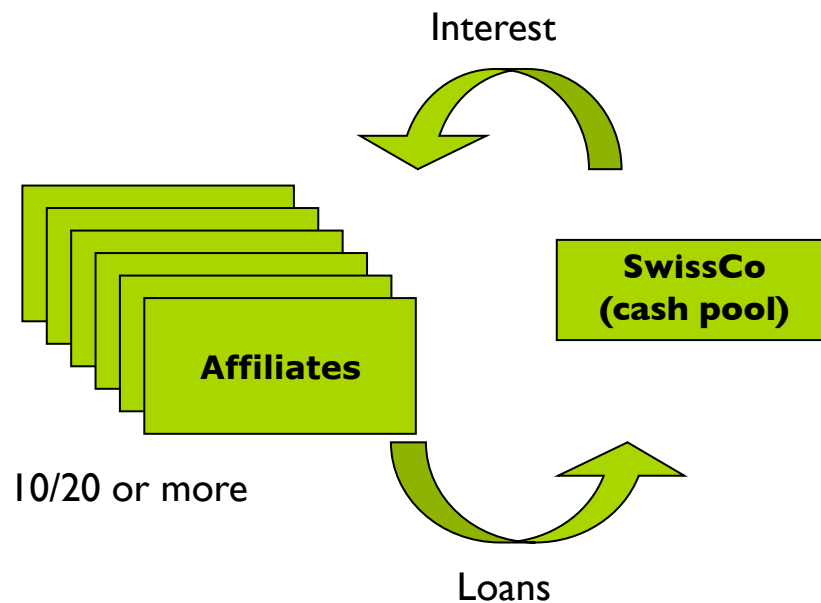
## Process

- Applicable *in principle* only since entry in force of revised treaties (with art. 26)
- Written request of a foreign competent authority
- For taxes ruled by the DTT only
- All persons that may be affected can participate in the process
- Preliminary analysis of the FTA. The request must
  - mention the applicable national tax rules
  - identify namely the tax payer and information holder, identify the taxes concerned, the tax period, the purpose of the information, why that information is accurate and why they are supposed to be in the possession of the information holder and confirmation that all internal means have been used
- Request is either denied or approved (claim to the Federal adm. Court possible – no claim to Federal Court!)

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## 4. Intragroup financing

Traditional case: cash pooling






**Previous practice:**

**No WHT on interest **except if:****

- **10 creditors rule:** loans (bonds) of min. CHF 500'000 at same conditions from 10 or more creditors
- **20 creditors rule:** accepts funds of min. CHF 500'000 from 20 or more creditors at variable conditions.

➔ **Practice abolished on 1.08.2010**

**! Min/Max Interest rate still to be respected !**

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## 5. Tax reform II

Entry in force on 1.1.2011

### Participation reduction




- For participation income, in case of holding of at least
  - 10% of share capital, or
  - 10% income and retained earnings (participation certificates), or
  - market value of min. CHF 1 mio.
  
- For capital gains on participation, in case of holding of at least a year and
  - 10% of share capital, or
  - 10%/1 mio rule.
  - Now available also for participation certificates

## 5. Tax reform II

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 fulfill:
  - 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

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## 6. Tax reform III

### ➤ Entry in force: ???

Are currently discussed:

- Abolition of issuance stamp tax (now 1% over CHF 1 mio contribution)
- Abolition of capital (net equity) tax? Cantonal decision...
- Full participation exemption (vs. current « reduction »)
- Amendments to the holding and mixed (based, domiciled) company regimes, notably:
  - Elimination of « mixed » holding status
  - Elimination of « pure domiciled » company status (no substance in CH)

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## 7. VAT

### ➤ Increase of VAT rates on 1.1.2011!!!

**8% / 3.8% / 2.5%**

### ➤ Transactions happening over the transition period: specific rules!

- Invoicing and payment are irrelevant in determining the applicable rate
- The only factor which determines the rate is the time period during which the services or goods are supplied!
- If the supply has been realized in both 2010 and 2011, the VAT has to be collected based on an allocation of the work performed in 2010 (old rates) and 2011 (new rates).
- Pay special attention to invoices on account, pre payments and invoices of 2011!

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# Contact

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