在瑞士直接投资：节税筹划是关键

Switzerland offers foreign direct investors favourable tax environment

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投资者在选择直接投资目的地时，不仅会寻找能够保障进入国际市场的良好框架，还会考虑具有吸引力的税务解决方案。不过什么是“具有吸引力的税务解决方案”呢？除了相当低的公司税率之外，关键是进行内部交易或未来进行重组（如存续分立）时的税负不会过重。最后，谨慎的投资者往往会早在投资刚开始时就考虑到撤离市场的场景了。

公司所得税与经合组织的质疑

瑞士是全球公司所得税税率最低的国家之一，大约为 12% 至 25%，具体取决于居民公司的住所地。不过，如果公司主要是在瑞士境外从事商业活动，或者公司成立的主要法定目的在于持有其他公司的股份，那么上述公司所得税税率会大幅度降低。此外，公司某些特定的商业活动可以享受非常低的税率，例如集团融资行为（税率为 2% 或更低），或者许可集团成员公司或第三方使用其知识产权（税率低于 10%）。最近，通过国际利润分配大幅降低税率已经成为了一种趋势，这种方法不需要利用双重征税协定中规定的税收优惠，纯粹是通过将一定的利润分配给公司的某个固定营业机构，也就是瑞士境外的一个分支机构。

上期文章介绍到，尽管目前欧洲的整体环境十分困难，但瑞士有能力继续保持其稳定的公共财政制度。因此，瑞士的税率预计也将继续维持在目前的低水平上，甚至会有一些进一步的改善，例如在税损结转的使用方面。

最近，经济合作与发展组织（OECD）对瑞士向外资控股公司提供的某些税收优惠制度提出了质疑。这可能会引起某些潜在投资者对这些税务解决方案可靠性的担忧。目前瑞士的政治讨论认为，无论最终做出怎样的变化，以避免 OECD 提出不利的税务后果（如适用受控外国公司规则等），瑞士的有效税率都不会增加，反而会通过其他税务方案降低税率（如对冲利息收支、对冲特许使用费收支、降低的公司所得税、创新等等）。

事先裁定制度

瑞士公司在许可国外集团成员公司使用其知识产权时，收取多少特许权使用费是合适的？瑞士公司为其在国际资本市场上发行债券的母公司提供担保时，是否应该收取担保金？税务亏损在两家瑞士公司合并之后能否继续使用？通过事先裁定制度，上述以及其他问题都可以得到解答。实践证明，对于投资者而言，预计计划中的商业活动的税务后果往往比税率高低更加重要。在公司未来商业活动的税务问题上，事先税务裁定对主管税务机关而言是具有约束力的认定。不过，应当注意的是，法律的变化或者瑞士最高法院所做决定所引起的实践变化是可以推翻事先税务裁定的。而且，事先税务裁定必须要在申请裁定的交易计划完成之前取得；向主管税务机关提交的有关事实必须要尽可能的详细而且及时。尽管得到一份签署的税务裁定通常需要大约三周的时间，但是在紧急情况下可能更快地获得答复。如前所述，向税务机关提交正确、完整的有关事实是非常关键的，否则即使是已签署的税务裁定也会被认定无效。

> “瑞士已经建立起一个全球双重征税协定网络，由大约 90 个协定组成”

撤资情形与利润分配

外国投资者应该可以清算公司，或者向资本来源国分配累计利润。另外，将公司出售给集团中的另一家成员公司或者独立第三人不应当引起不利的税收后果。

在瑞士，包括累计利润在内的所有清算收益或者利润分配基本上都要缴纳 35% 的预提税，而偿还股东出资，包括盈余支付，是无需纳税的。此外，在特定情况下，向关联公司或者独立第三人出售公司可能会引起预提税问题。

避免双重征税协定能有效限制或排除瑞士征收预提税的权利，降低相关预提税税率。瑞士已经建立起一个全球双重征税协定网络，由大约 90 个协定组成，包括分别与中国和香港特别行政区签订的协定（后者在瑞士于 2013 年 1 月 1 日起对有关税项具有效力，在香港于 2013 年 4 月 1 日起对有关税项具有效力）。

根据这些税收协定，任何退出市场或者分配利润的形式都不会引起不利的税收后果。瑞士公司向其中国或者香港母公司支付股息的，最多需要缴纳的预提税税率分别为 10% 和 0%。

总之，从税务角度来说，对于跨国集团欧洲中心的建立而言，瑞士是一个充满吸引力的国家。瑞士的吸引力不仅仅在于它拥有很低的公司税率，还在于瑞士对于重要资本流动的税收待遇十分优惠，并且签订了许多利于股息分配的双重征税协定。■

Whenever investors consider a location for direct investments, they look not only for an excellent framework in terms of access to the global markets, but also for attractive tax solutions. But what are 'attractive tax solutions'? Besides an environment of fairly low corporate profit taxes, it is key to get comfort on the tax consequences of any intra-group transactions, or of upcoming restructurings (e.g. split-offs). Finally, even at the beginning of an investment, the careful investor is already considering the exit scenario.

Corporate profit tax

Switzerland offers one of the lowest corporate tax rates in the world, from approximately 12% to 25%, depending on in which region of Switzerland a company is resident. However, these tax rates can significantly be reduced for companies that perform their business activities predominantly outside Switzerland, or whose statutory purpose is holding stakes in other companies.

Furthermore, certain dedicated corporate functions benefit from exceptionally low taxation, for example group financing activities (tax rates of 2% or less) or licensing of intellectual property rights to group companies or to third parties (tax rates of below 10%). Recently, as a trend, significant reductions of the tax rate have been achieved by way of international profit allocation, without the need to obtain any double taxation treaty benefit, purely by allocating certain profits to a fixed place of business of a company, i.e. a branch outside Switzerland.

As outlined in our last column, it can be expected that Switzerland will be able to maintain its solid, stable public finance despite the current difficult environment throughout Europe. It can therefore be expected that the tax rates will also remain at the current low level, and even further improvements – for example, related to the use of tax loss carry forwards – can be achieved.

OECD challenge

Recently, the Organisation for Economic Co-operation and Development (OECD) has challenged certain favourable tax models that Switzerland is providing for foreign-controlled companies.

This may have caused some concerns for potential investors as to whether these solutions will be reliable. The current political discussion within Switzerland now points to whatever changes may finally be made in order to avoid any adverse tax consequences set out by the OECD (such as the application of controlled foreign company [CFC] rules, etc.), the effective tax rates will not increase but rather be lowered through alternative tax solutions (e.g. interest box, licence box, reduced corporate income taxes, innovation box, etc.).

Comfort via advance tax rulings

What is the appropriate royalty for any licence rights granted by a Swiss company to its international group companies? Is a Swiss company required to receive a guarantee fee for a guarantee granted for the benefit of its parent company, which issues a bond on the international capital markets? Can tax losses still be used after a merger of two Swiss companies? With an advance tax ruling it is possible to get clarification of these and other issues.

In practice, it often turns out that getting certainty on any tax consequences of planned activities is of much more value to investors than the pure tax rate. An advance tax ruling constitutes a binding confirmation of the competent tax authority with regard to any future corporate activity.

It should, however, be noted that a change of law or a change of practice due to a decision of the Swiss Supreme Court may overrule an advance tax ruling. Further, an advance tax ruling is required to be obtained prior to realisation of the planned transaction subject to the ruling; the particular facts have to be presented to the competent tax authority in as much detail as possible, and in a timely manner. Whereas it may usually take about three weeks to obtain a signed tax ruling, a quicker reply is possible in urgent matters. As already mentioned, it is key to present the correct and complete facts to the tax authority, since otherwise even a signed tax ruling can be held void.

Exit scenarios

An investor needs to be in a position to either liquidate a company or repatriate the accumulated profits. Furthermore, the sale of a company to another group company or to an independent third party should not trigger adverse tax consequences.

> *"Switzerland provides for a worldwide double taxation treaty network of approximately 90 treaties"*

In Switzerland, any liquidation proceeds consisting of accumulated profits or a distribution of profits are basically subject to a withholding tax of 35%, whereas the repayment of capital contributions, including surplus payments, is tax free.

Furthermore, under certain circumstances, the sale of a company to a related company, or even to an independent third party, may cause withholding tax issues.

The withholding tax can be mitigated based on a double taxation treaty, limiting or encumbering the right of Switzerland to impose such a tax. Switzerland has a worldwide double taxation treaty network of approximately 90 treaties, including with the PRC and the Hong Kong Special Administrative Region (HKSAR), the latter entering into force as of 1 January 2013 with respect to Swiss tax, and as of 1 April 2013 with respect to Hong Kong tax.

Repatriation of profits

Based on these treaties, any form of exit or repatriation of profits can be performed without triggering adverse tax consequences. The maximum withholding tax rate on dividend payments made by a Swiss corporation to its China or HKSAR parent company is 10% and 0%, respectively.

In summary, it can be stated that also from a tax perspective, Switzerland is an attractive jurisdiction to establish the European hub of an international group structure. Much more than simply the low corporate tax rates, it is the comfort on the tax treatment of any critical movements and the beneficial double taxation treaties applicable to dividend distributions that make Switzerland an attractive domicile. ■

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