

# 中国瑞士避免双重征税协定分析

## Analysing the Sino-Swiss double taxation agreement



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**根**据我们的观察,中国企业家们在考虑境外投资时已经越来越意识到税收问题的重要性。他们经常首先问到,其在瑞士的分支机构的收入是否既会被瑞士又会被中国征税,或者,同类税种是否会被瑞士和中国的税务机关以同一税目征收。

双重征税不利于商品和服务的国际交易及资金、技术和人才的跨境流动。为了消除这个障碍,瑞士政府已与90多个国家签订避免双重征税协议(DTA);中国和瑞士之间的《避免双重征税协议》已于1991年起生效。

### 营业利润

根据中瑞避免双重征税协议,缔约国一方企业的利润将仅在该缔约国一方纳税,除非该企业通过位于缔约国另一方的常设机构经营业务。

如果企业选择通过这样的常设机构进行经营,企业的利润就可能会在缔约国另一方征税,但仅对那些(明确地或直接地)归属于该常设机构的利润征税。

就中瑞避免双重征税协议而言,常设机构通常是指管理场所、分支机构、办事处、工厂或作业场所,亦即企业进行全部或部分营业的固定营业场所。

瑞士的企业所得税率取决于相关州或区的规定,但都介乎12%至26%之间,大大低于中国30%的税率,这值得在瑞士从事经营的中国企业考虑将自己的瑞士业务实体设立为合格的常设机构。中国企业与其瑞士分公司之间的商品和服务流转必须按公平市价计算。因此设立常设机构是否比设立分公司更有利,这取决于各种条件并需要针对个案具体分析。

### 股息、利息

**股息** 根据中瑞避免双重征税协议,缔约国一方(例如瑞士)居民公司支付给缔约国另一方(例如中国)居民的股息,可以在该缔约国另一方(中国)征税。然而,这些股息也可以在支付股息的公司是其居民的缔约国,按照该缔约国法律征税。但是,如果收款人是股息受益所有人,则所征税款不应超过该股息总额的百分之十。

在实践中,两国对支付的股息征收预提所得税(WHT)。根据中瑞避免双重征税协议,瑞士的股息预提所得税标准税率由原来的35%减为10%;在中国,支付给瑞士自然人的股息税率为10%(没有避免双重征税协议时是20%),而支付给瑞士企业的股息税率为标准的10%(在这一点上没有任何条约优势)。

为了避免双重征税,中国居民作为股息收款人在瑞士支付的预提所得税,将抵扣中国税务机关对其征收的税款。如果中国公司持有瑞士公司至少10%的股份,即使是瑞士公司代为缴纳的利润所得税亦可抵扣在中国的利润所得税。

瑞士公司如持有中国子公司至少10%的股份,其从中国子公司收到的股息支付可参与瑞士的免税。如果参与免税不适用,其在中国的预提所得税将计入其在瑞士的企业利润税。

**利息** 根据中瑞避免双重征税协议,两国都对(来自贷款的)利息征收了10%的最大预提所得税。然而,在瑞士,对基于普通贷款(如公司间贷款)协议的利息并无预提所得税,预提所得税只对银行贷款利息及债券利息征收,税率为35%。在中国,对瑞士自然人支付的利息的税率是10%(没有避

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免双重征税协议时是20%),对瑞士企业的利息收入是标准的10%的税率(在这一点上没有任何条约优势)。

### 特许权使用费

类似于利息,两国税务机关对特许权使用费(例如专利或商标许可费)有权征收最高可达10%的预提所得税。然而,瑞士不征收特许权使用费预提所得税;在中国,对瑞士自然人支付的特许权使用费的税率为10%(没有避免双重征税协议时是20%),对瑞士企业的特许权使用费收入是标准的10%税率(在这一点上没有任何条约优势)。

### 资本收益

在瑞士,对居民没有具体的资本利得税。对瑞士公司而言,资本收益除非来自参与销售,可能有资格参与免税,否则均作为普通收入征税。根据瑞士的国内法,对非居民(例如中国人)投资者出售瑞士公司的股份而赚取的资本收益通常不征收瑞士税项,除非所出售的为瑞士的物业控股公司的股份。

同时,1990年中瑞避免双重征税协议已做出重大修订,中瑞双方已于2013年9月25日签订了新的避免双重征税协议。新协议预计将于2014年生效,新规定将于2015年1月1日起生效。举例来说,根据新协议规定:对合资格子公司支付的股息征收更低的预提税(由10%下调为5%);对于向中国国有控股企业(如中国投资有限责任公司)支付的股息,瑞士将完全豁免预提税;对特许权使用费征收的预提税略有下降(由10%下调至9%)。本专栏的下一期文章将对新协议作更深入的分析。■

**A**ccording to our observations, Chinese entrepreneurs have become more aware of tax issues when considering offshore investments. One of their first questions in this regard is often whether income received from their Swiss affiliates would be taxed both in Switzerland and in China, or whether comparable taxes would be imposed for the same item by both the Swiss and Chinese tax authorities.

Double taxation is harmful to the international exchange of goods and services, and cross-border movements of capital, technology and persons. In recognition of the need to remove this obstacle, the Swiss government has concluded double taxation agreements (DTAs) with more than 90 countries; the Sino-Swiss DTA has been in effect since 1991.

### Business profits

According to the Sino-Swiss DTA, the profits of an enterprise of a contracting state will be taxed only in that contracting state, unless the enterprise carries on business in the other contracting state through a permanent establishment (PE) situated there.

If the enterprise chooses to carry on business through such a PE, the profits of the enterprise may be taxed in the other contracting state, but only those (specifically or directly) attributable to that PE.

For the purposes of the Sino-Swiss DTA, a PE is typically a place of management, a branch, an office, a factory or a workshop – a fixed place of business through which the business of an enterprise is wholly or partly carried out.

Since the Swiss rate of corporate income tax – 12-26%, depending on the location canton, or district – can be considerably lower than the Chinese rate (30%), it could be interesting for Chinese enterprises doing business in Switzerland to have their Swiss business entity qualified as a PE.

Goods and services transferred between a Chinese enterprise and its Swiss subsidiary have to be accounted at fair market value.

Whether or not a PE is in fact more advantageous compared to setting up a subsidiary depends on various circumstances and needs to be analysed in any particular case.

### Dividends

According to the Sino-Swiss DTA, dividends paid by a company which is a resident of a contracting state (e.g. Switzerland) to a resident of the other contracting state (e.g. China) may be taxed in that other contracting state (e.g. China). However, such dividends may also be taxed in the contracting state of which the company paying the dividends is a resident (e.g. Switzerland) and according to the laws of that contracting state, but only if the recipient is the beneficial owner of the dividends, and the tax so charged shall not exceed 10% of the gross amount of the dividends.

In practice, both countries levy a withholding tax (WHT) on dividends paid. In Switzerland, the dividend WHT rate is reduced from the standard rate of 35% to 10%, based on the Sino-Swiss DTA; in China, dividends paid to a Swiss natural person are taxed at 10% – versus 20% without a DTA – and those paid to a Swiss enterprise are taxed at the standard 10% (no treaty advantage in this point).

To avoid double taxation, the WHT paid in Switzerland on dividends to a Chinese resident recipient will be credited against the Chinese tax imposed on the recipient by the Chinese tax administration. If the Chinese company holds at least 10% of the shares in the Swiss company, even the corporate profit tax paid by the Swiss company is credited against the profit tax in China.

Dividend payments received by a Swiss company from its Chinese subsidiary are subject to participation exemption in Switzerland, provided it holds at least 10% of the shares in the subsidiary. Should the participation exemption not be applicable, the Chinese withholding tax would be credited against the corporate profit tax in Switzerland.

### Interest

According to the Sino-Swiss DTA, both countries impose a maximum WHT of 10% on interest (derived from loans). In Switzerland, however, there is no WHT on interest derived from regular loans (e.g. intercompany loan) agreements, it is only levied on bank interest and interest on bonds (35%). In China, interest paid to a Swiss natural person

is taxed at 10% – versus 20% without a DTA – and those paid to a Swiss enterprise is taxed at standard 10% (no treaty advantage in this point).

### Royalties

Similar as with interest payments, the tax authorities of both countries are entitled to impose a maximum of 10% WHT on royalties (e.g. patent or trademark licence fees). However, there is no WHT on royalties in Switzerland, whereas in China, royalties paid to a Swiss natural person are taxed at 10% – versus 20% without a DTA – and those paid to a Swiss enterprise are taxed at the standard 10% (no treaty advantage in this point).

### Capital gains

There is no specific capital gains tax in Switzerland for residents. For Swiss companies, capital gains – unless from sale of participations, which may qualify for participation exemption – are taxed as ordinary income. Under the domestic law of Switzerland, capital gains earned by a non-resident (e.g. Chinese) investor from disposal of shares in a Swiss company are generally not subject to Swiss tax, except where the disposal is of shares in a Swiss property holding company.

Meanwhile, the 1990 Sino-Swiss DTA has been significantly revised by a new DTA, signed by both China and Switzerland on 25 September 2013. This new DTA is expected to enter into force in 2014, and the provisions are expected to become applicable as of 1 January 2015.

The new treaty provides, among other things, for a lower withholding tax on dividend payments from qualifying subsidiaries (5% instead of 10%), for a full relief of Swiss withholding tax on dividends paid to entities held by the Chinese government (e.g. China Investment Corporation) and to a lower withholding tax on royalties (9% instead of 10%). A deeper analysis of the new DTA will be given in our column in the next issue. ■

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