

EXCERPT FROM THE INSTRUCTIONS FOR TAXATION OF ASSOCIATED COMPANIES, HOLDING COMPANIES, FOREIGN BASE FIRMS AND MIXED COMPANIES (HDW)

Holding Companies (Art. 76 para 2 StG)

I. Requirements for Taxation as a Holding Company

A holding company under Art. 75 StG (Schwyz tax code) is a corporation or cooperative engaged principally in the continuous management of equity holdings and doing no business in Switzerland. A firm may be taxed as a holding company under the following conditions:

- a) The holding purpose must be stated by the articles of incorporation and must be actually pursued.
- b) The principal aim must be the continuous management of equity (stock, original capital contributions made to a limited company, shares in a cooperative, participating receipts). Long-term loans to wholly-owned subsidiaries also count as equity if at the level of the subsidiary they are considered concealed equity. Shares in the nominal capital of a US limited liability company (LLC) are likewise considered equity. Obligatory relations like loans, advances and bonds, bonus shares, hybrid financing instruments (e.g. subordinated loans), shares in unincorporated firms and stock in Swiss and foreign mutual funds, as well as firms substantially equivalent to them in nature, are not deemed equity.

Only those holdings count as equity that exceed 20 per cent of the original capital of the subsidiary.

- c) A holding company may conduct only those secondary activities that do not amount to doing business in Switzerland.
- d) Conduct of secondary activities must be of subordinate importance with respect to the continuous management of equity.
- e) Equity or profits on equity must in the long term constitute at least two thirds of the total assets or profits, including real estate. "Profits on equity" means participation in profits resulting directly from equity, namely payments that for the firm in which the equity is held constitute not an expense but rather distribution of profits, as well as profits resulting from equity in 20 per cent of the original capital of the other firm.

- f) For the calculation of the ratio of equity to total assets the figures of year-end taxes on profits must be applied (book values plus hidden reserves taxed as profit). This rule applies likewise to portfolio capital, insofar as the firm in question is for practical purposes a holding company and not a trust fund. The taxpaying company may use market values to substantiate its compliance with the conditions; in this case however all assets must be posted at market values.
- g) The decision is made on the basis of a financial statement that must comply with the minimum classification rules required by commercial law. Such financial statement must fulfill the principles of unambiguous presentation of items and of prohibition of set-offs. (Art. 662 a para 2 OR - law of obligations). Assets are set off against depreciation in amortization accounts and adjustments to value on certain assets (e.g. write-offs of uncollectible credits). Loans payable and receivable within the group of firms may likewise be set off (e.g. a wholly-owned subsidiary makes a loan to the holding company, which lends the funds to another wholly-owned subsidiary). No other set-offs are allowed.

II. Permissible Secondary Activities

1. Management of the holding company

Activities that relate to the holding company itself are allowed. This includes the management of the holding company, investment of its own assets, its own accounting and activities resulting from the corporate status of the holding company, like performing the duties of a member of the board of directors and participation in general shareholders' meetings.

2. Control of equity

The holding company may buy and sell equity provided this does not impair its character as a holding company (in the meaning of the verb "to hold"). Equity financing of startup or recently founded firms with equity capital (so-called private equity engagements) is permissible in principle for holding companies provided the holding company does not manage such firms.

3. Activities for the group

The making of strategic decisions for the group of companies as a whole is a permissible activity. The following auxiliary activities are authorized if performed for the benefit of the group as a whole: operation of a central management and reporting system for the group organization, market research, legal and tax consulting, personnel consulting regarding executives, financing of the group through unified methods of raising funds on the capital market and the financing of wholly-owned subsidiaries.

Expenses incurred by the holding company for activities conducted on behalf of the group as a whole may be billed to the subsidiaries on arm's-length terms, as a rule on a cost-plus basis with a 5 per cent markup. However the amount of the compensation paid by the subsidiaries must be minor in comparison to the profit that can be earned from the firm's equity management business. If this condition is not met, there is a presumption of unauthorized business activities.

4. Management of subsidiaries

Management of subsidiaries is authorized as a secondary activity only when this activity is of minor importance compared to the equity management activities. For practical purposes the firm must be a holding company with a management sideline and not a management firm with a holding company sideline. Furthermore the managers of the holding company must be employees of the holding company for civil law and social security affiliation purposes; failing that, the expenses of their employment must be met by the holding company.

5. Management of rights to intangible assets

In general, management of rights to intangible assets implies unauthorized business, since the development of inventions and the administration of patents require employment of staff. Control of trademarks generally requires active trademark protection, the determination of a communications strategy, technical assistance and verification of quality at concessionary firms. These activities too are in general deemed inconsistent with holding company tax status.

Management of rights to intangible assets is authorized as a secondary activity only when this activity is negligible compared to the equity management activities.

III. Tax on Profits

1. Principle

Save for the restrictions imposed by clauses 2 to 4, holding companies pay no tax on their profits.

2. Net profits from real property located in Canton Schwyz

Under Art. 75 para 2 StG net profits from real property located in Schwyz are taxed at the regular rate.

Profit is defined as the entire revenue from rental and leasing including the market rental value of property used by the owner.

The following items may be deducted from revenues:

- Living expenses
- Management expenses up to 5 per cent of rental and lease income
- Interest on debts attributable to the property; the proportion of all financing expenses pertaining to the property is the proportion of the amount of tax on profit from the property as a percentage of the amount of tax on profits from all assets, rounded off to three decimal places.
- Prorated tax on profit and capital.

Under Art. 70 StG net losses from real property ownership may be set off against later profits from real property ownership. No set-off is allowed against other profits of the holding company.

Circumstances resulting from real property ownership outside the Canton are taken into account for the determination of the tax rate. For the determination of the profit tax rate only the net profit subject to profit tax is taken into account. Allocation of tax payments among the cantons and between Switzerland and other countries is carried out pursuant to Art. 58 para 1 StG according to the principles of Federal law forbidding double taxation among cantons.

3. Conversion into a holding company or foreign base company

If a corporation or cooperative becomes a holding company for purposes of tax law, accounts must be settled as to hidden reserves on chattel assets. However the firm may demand that taxation of the hidden reserves on its equity and rights to intangible goods be deferred. Under Arts 74 para 2 StG, 243 para 1 and 3 StG and 244 StG, this implies that for tax purposes realization of capital gains on equity must be accounted for by 1.1.2007; after this date the equity deduction may be set off against realization of capital gains on equity. Thereafter Art. 77 StG has effect only for realization of hidden reserves on rights to intangible goods.

If a firm loses its holding company privileges it becomes subject to regular taxation after expiration of a grace period generally lasting two years. Hidden reserves that accrued while the firm enjoyed holding company privileges may be declared in the balance sheet submitted for tax purposes before regular taxation begins. Losses from fiscal years for which the holding company privilege is claimed may not be set off after regular taxation begins.

4. Income for which discharge of foreign income is claimed

Income for which discharge of foreign income is claimed and for which the double taxation agreement requires regular taxation in Switzerland, is taxed at the regular rate after deduction of the expenses associated with such income.

IV. Capital Levy

Under Art. 79 StG taxable equity capital comprises paid-in original capital, open reserves and reserves accumulated from taxed profit, and hidden reserves that would be accumulated out of taxed profit if profit were taxed. In addition, under Art. 80 StG taxable equity capital is increased by that portion of borrowed capital that is economically equivalent to equity capital. The simple capital levy has a rate of 0.025 per thousand of equity capital subject to levy, but at least 100 francs (Art. 83 para 1 StG).

Under Art. 83 para 2 StG the proportional simple capital tax on real property located in Schwyz is 0.4 pro mille.

V. Procedure

Holding companies are assessed according to the regular procedure. They must submit a tax declaration at the conclusion of each fiscal year and apply on the tax declaration form itself for tax treatment as a holding company. Under Art. 75 StG the tax inspector decides which tax regimen will be applied.

Schwyz, November 5, 2008