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## **CONFIRMATION BY THE SWISS FEDERAL TAX ADMINISTRATION REGARDING THE ACCELERATED DISTRIBUTION OF DIVIDENDS**

The Swiss Federal Tax Administration (SFTA) has recently cleared the way for the accelerated distribution of dividends from subsidiaries to the parent company and the shareholders of the parent company from a Swiss withholding tax perspective.

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### **Simultaneous recording of dividends**

A subsidiary can only pass on the profit generated (in the business year n) to the parent company as a dividend after the end of the business year (i.e. in the year n+1). For its part, the parent company cannot distribute this dividend until it has recorded it as an income, established distributable reserves and had the shareholders' meeting approve the corresponding financial statements. This means that at least one further business year passes before the original profit of the subsidiary (from year n) can be distributed to the shareholders of the parent company (in the year n+2).

The Swiss Handbook of Auditing provides that this two-stage process can be accelerated if the following requirements are met:

- The subsidiary's balance sheet date is not later than that of the parent company;
- The general shareholders' meeting of the subsidiary has decided on the distribution of profits before the general shareholders' meeting of the parent company takes place;
- The simultaneous dividend is disclosed in the notes to the financial statements of the parent company.

With this proceeding, profits or distributable reserves of subsidiaries can be distributed to the shareholders of the parent company shortly after they have been approved as dividends to the parent company. The parent company must record

the dividend in the financial statements (of year n) in the year prior to the subsidiaries' dividend resolution (against transitory assets). In the financial statements for the following year (n+1), the deferred recording has to be reversed and the dividend actually paid is recorded as income from the subsidiary.

The SFTA has now reviewed this procedure with respect to the withholding tax and has come to the conclusion that the withholding tax can be reclaimed – in accordance with the general reclaim requirements – in this accelerated procedure or can be settled by the notification procedure.

## Reclaim of withholding taxes / Notification procedure

Individuals or companies resident in Switzerland can fully reclaim the withholding tax under the following requirements:

- Beneficial ownership on the shareholding at point in time of the distribution of the dividend;
- Correct declaration of the income with the Swiss tax authorities in due time;
- No tax avoidance as a result of the reclaim of the withholding tax.

Individuals or companies resident outside of Switzerland may reclaim part or the whole Swiss withholding tax in case the following requirements are fulfilled:

- Applicable double taxation treaty that grants at least a partial reduction of the remaining withholding tax (for legal entities usually a certain minimum shareholding or holding duration is required for a whole refund);
- Filing of a claim for refund in due time (in case the notification procedure is not applicable)
- Beneficial ownership on the shareholding at point in time of the distribution of the dividend;
- No tax avoidance as a result of the reclaim of the withholding tax.

If the so-called notification procedure is applicable, the Swiss company is not required to withhold the reclaimable portion of the withholding tax and the full (remaining) dividend can immediately be paid out to the shareholder domiciled outside of Switzerland.

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