Swiss Withholding Tax Reclaim Procedure – Summary of key aspects

According to Swiss withholding tax law, interest payments made on bonds issued by a non-Swiss company which are guaranteed by a Swiss group company in the form of a downstream guarantee[1] and where the funds obtained from the capital market are used in Switzerland[2], are subject to Swiss withholding tax (WHT) of 35%. The Swiss Federal Tax Administration has recently ruled that this WHT is applicable to the senior secured bonds issued by DDM Treasury Sweden AB (publ).

However, such Swiss withholding tax can basically be recovered by means of refund, i.e. a recipient of interest payments of the bonds is entitled to reclaim the (full or partial, as applicable) amount of the Swiss withholding tax, provided that the following requirements are met:

- The recipient of the income has its tax domicile in a jurisdiction which Switzerland has concluded a double tax treaty (which, for example, is the case with Sweden, the U.K. and Luxembourg);

- Any specific conditions set by an applicable double tax treaty or the Swiss Federal Tax Administration are met;

- The interest income has been properly declared to the tax authorities in the jurisdiction where the recipient is tax domiciled, i.a. recorded as an income in the tax return, and the tax authorities in that jurisdiction are willing to issue a certificate of residency (by signing and stamping the Swiss refund request form);

- The refund can be requested after the end of a calendar year, but has to be filed within 3 years after the end of the calendar year in which the interest became due at the latest.

Investors with their domicile in Sweden or the U.K. should basically qualify for a full refund of any Swiss withholding tax due provided that the requirements as set-out in the double tax treaty between Switzerland and Sweden or the U.K. and as set by the Swiss Federal Tax Administration are met. Investors with their domicile in Luxembourg should basically qualify for a partial refund[3] of the Swiss withholding tax due provided that the requirements as set-out in the double tax treaty between Switzerland and Luxembourg and as set by the Swiss Federal Tax Administration are met. For further details please find below a summary of the refund process and the required information to be provided to the Swiss Federal Tax Administration.

Refund Process for Swedish, UK and Luxembourg investors

Generally, the WHT can be reclaimed after declaration and payment of the Swiss withholding tax by DDM (but only once per calendar year), but no later than the 31 December in the third year following upon the calendar year in which the income became due.

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[1] The share pledge related to the shares in the issuer made by DDM Group AG is for Swiss tax purposes considered a downstream guarantee.

[2] Since the funds obtained by the issuer are onlent to Swiss SPVs which then did invest the funds, the Swiss tax authorities consider the funds to be used in Switzerland in the case at hand.

[3] Reclaim based on DDT Switzerland / Luxembourg amounts to 25% out of 35% Swiss withholding tax.

In order to apply for a refund, a form provided by the Swiss Federal Tax Administration[4] needs to be completed, signed and stamped by the local tax authorities in the country of residency of the holder and subsequently filed with the Swiss Federal Tax Administration. The process in connection with this form is as follows:

1. The first three copies of the form duly completed and signed, must be sent to the responsible tax office in Sweden, the U.K. or Luxembourg.
2. The responsible tax office has then to confirm directly on the bottom of the reverse side of each of the three copies of the form that the beneficial owner, at the due dates mentioned in the claim, was tax resident in Sweden, the U.K. or Luxembourg and also officially stamp and duly sign the form. Subsequently, the forms shall be returned to the claimant.
3. The claimant shall then send the first two copies of the claim to the Swiss Federal Tax Administration, Eigerstrasse 65, CH-3003 Berne, Switzerland.
4. The Swiss Federal Tax Administration will then process the refund request and pay back the funds to the beneficial owner using the bank account information that needs to be included on the form. Usually, it takes a couple of weeks for the tax authorities to do so.

It should be noted that only one refund request can be submitted per investor and calendar year. Hence, since interest is paid semi-annually under the bond, one request needs to be filed for both of the semi-annual interest payments.

Required Information for Refund

The following specific information needs to be included in form 80, form 86 or form 79:

- File number[5]
- Name and address of the beneficial owner of the relevant notes
- Address of payment, including IBAN, SWIFT/BIC code, and the name and address of the bank as well as the name of the accountholder
- Detailed description of bonds, i.e. name of debtor, date of acquisition, total par value of bonds, due date of interest and gross interest refund.
- Tax certificates, credit slips, account statements, etc. which are showing the deduction of the Swiss tax withheld (in Swiss francs) in Switzerland. DDM will support the investors in gathering this information.

More information and the necessary form 80, form 86 or form 79 concerning the reclaim of the Swiss withholding tax can be found on the homepage of the Swiss Federal Tax Administration: https://www.estv.admin.ch/estv/en/home/verrechnungssteuer/verrechnungssteuer/dienstleistungen/ausland.html

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[4] Sweden – Form 80; U.K. – Form 86; Luxembourg – Form 79
[5] A file number for every reclaim request will be issued by the Swiss Federal Tax Administration, i.e. for the first request no file number need to be inserted in the request form. For all following requests the given file number need to be filled in.

Note: This document summarises the current refund process and required information currently requested by the Swiss Federal Tax Authorities. These facts might be subject to change in the future and will need to be verified on a regular basis.