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EAS 2911

Swiss Holding company with a 25 % participation in an Austrian company

According to Article 10 para. 2 of the DTC with Switzerland a Swiss company which holds at least 20% of the share capital of an Austrian company is entitled to claim full relief from the 25% Austrian dividend tax levied on distributions of the Austrian company.

However, if the Swiss company should be a mere holding company relief from Austrian source tax can only be obtained through the refund procedure (cf sec. 3 of the Ordinance BGBl III 92/2005). In the course of such a refund procedure the Austrian tax authorities may open an investigation as to whether the Swiss holding company is actually the beneficial owner of the profit distribution or whether in accordance with the respective Austrian tax law the distribution has to be allocated to the shareholders of the company. The latter would be required if the holding company were a mere "letter box company". A "letter box company" is unable to exercise any activities (ruling of the Supreme Administrative Court, VwGH 22.3.1995, 93/13/0076); as a consequence, it will be the shareholder of the Swiss letter box company rather than the letter box company itself who acts in the interest of keeping the investment in the Austrian company a profitable one.

If an individual who is a resident of Switzerland has set up a Swiss corporation in 2004 (equity capital EUR 1,000.000) and has arranged that the corporation gets a loan from a Liechtenstein Foundation at the amount of EUR 99,000.000 in order to purchase a 25% participation in an Austrian company, it is likely that the Austrian tax authorities will treat the Swiss individual as the beneficial owner of the Austrian dividend. Consequently, according to Art. 10 of the DTC with Switzerland the profit distribution (EUR 5,000.000) may be subjected to tax in Austria at a rate of 15% so that only 10 percentage points of the Austrian dividend tax will be refunded (cf. EAS 892). The fact, that EUR 4,950.000 of interest has to be paid for the loan to the Liechtenstein foundation is of no relevance, as the Austrian dividend tax has to be levied on the gross amount of the dividend.

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