



Tax Notes

Our business - your insight

Arm's length interest rates of cash pools

As part of a tax audit in Swiss companies regarding income or withholding tax, almost always the interest on loans from and to group companies is audited. Also regularly reviewed is the interest rate of cash pools in terms of its qualification as "at arm's length". Experience has shown that - whether and to what extent the interest rates as per the annually published circular letter of the Swiss federal tax administration (CL SFTA) are applicable to cash pools - is not handled in a uniform manner. Even though the prevailing opinion is that the interest rates according to the CL SFTA should only be applicable for long-term loans, a corresponding interest rate or other arm's length proof might be requested during a tax audit also for the cash pool. But not only the cash pool interest rate can result in discussions but also a spread between the asset and the liability interest rate. This raises the question which "spread" is considered at arm's length if no corresponding documentation is available. In such cases, it is usually referred to the CL SFTA even if the tax authorities consider the respective interest rates in principle as not applicable for cash pools. On the one hand, one can be of the opinion that the „spread“ which should be applied that is determined from the difference between the asset and liability interest rate according to the

CL SFTA for loans in CHF. This spread is in general comparably high. On the other hand, one can be of the opinion that a "spread" of max. 0.25% or 0.5% can be considered at arm's length (like section 1.2 CL SFTA for loans in CHF). Depending on how the Swiss company deposits liquidity in the cash pool or withdraws it, it seems that the tax authorities prefer one method or the other. The avoidance of add-back risks is therefore in practice difficult without comprehensive documentation of the arm's length qualification of the cash pool interest.

ANOBAG - Occupational benefits insurance

For a person working in Switzerland who is employed by a foreign employer, the insurance possibilities within the occupational benefits insurance must be adhered to in particular. With the exception of special circumstances (i.e. secondments) employees who exclusively work in Switzerland are subject to compulsory insurance within the OASI (Old age and survivors' insurance). For this purpose it is irrelevant whether the employer has legal domicile or a permanent establishment in Switzerland or not. The legal situation is different regarding the insurance obligation in terms of occupational benefits insurance. Here employees with an EU/EFTA employer are subject to the obligatory occupational benefits insurance (EU/EFTA-ANOBAG).

However, the obligatory insurance obligation does not apply if the employer has its legal domicile in a third country (third-country ANOBAG). The reason lies with the Agreement of free movement of persons with the European Union. It states that an EU/EFTA employer is liable to contribute for Swiss employees in the OASI. This liability triggers the compulsory occupational benefits insurance of the employee.

A third-country ANOBAG can be voluntarily insured within the occupational benefits insurance under the same terms as a self-employed person. This means he can join the pension fund of his professional association or the Contingency Fund (Auffangeinrichtung). At the same time - unlike the EU/EFTA-ANOBAG - it is not permitted to join a collective pension fund (Sammelstiftung) by adhering to the "virtual collectivity" principle. This also applies in particular if only a non-obligatory solution is chosen (Pillar 2b).

The current disadvantaged position of the third-state ANOBAG was actually to be eliminated in the 2020 OASI reform which was rejected in the referendum. De lege ferenda the voluntary insurance should be expanded so that self-employed persons and also third-country ANOBAG's can also be insured in a pension institution of their choice.

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