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Tax Notes

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Tax consequences in the sale of shell companies

Who hasn't already heard of shell companies or come across ads in the press in which share certificates are offered for sale or sought as purchase objects? However, the possible tax-related consequences of the purchase or sale of shell companies must be taken into consideration.

Shell trading is the change in ownership of a majority of participation rights in a Swiss company which has been rendered into liquid form. The company has discontinued its statutory or actual activities. Instead of formally executing the liquidation procedure and deleting the company from the commercial register, the participation rights to the de facto liquidated company are sold. From a tax point of view, however, it should be noted that the sale of a shell company qualifies as tax evasion, both in terms of withholding tax as well as issuance stamp duty and under direct taxation. This means that, for tax purposes, a liquidation with subsequent re-establishment is assumed.

On the level of the **company (shell),** the following tax consequences arise:

- Withholding tax on a fictive liquidation surplus as at the date of the sale (liquidation surplus = proceeds from sale or lower net assets respectively, minus initial capital/authorized stock capital, minus capital contribution reserves)
- Respectively in the case of **accumulated losses,** withholding tax on the reduction of the accumulated losses through future profits at the time of approval of the corresponding annual accounts by the General Assembly.
- Issuance stamp duty on the „re-establishment" as at the date of the sale (taking the exemption limits of CHF 1 million into consideration).
- Tax loss carry-forwards can no longer be exercised in profits tax.

In terms of tax consequences, a distinction must be made in shell trading as to whether the **Seller** is a natural or a legal person. If the seller is a **natural person,** the sale of the shell company will not result in a tax-free capital gain but rather in a taxable investment income (fictive liquidation dividend). These liquidation dividends are subject to income tax under consideration of the partial taxation rules. If the seller is a **legal person,** it must only be noted that, for the participation exemption, the specific requirements for the capital gain are not applied (disposal proceeds exceed prime costs, one-year holding period), which can accordingly be advantageous. In particular, the withholding tax-related consequences are likely to be forgotten in the case of **accumulated losses** since the tax implications are delayed at first. In some circumstances, this omission is first noticed during a withholding tax evaluation by the Federal Tax Administration.

Because the newly realised earnings are offset against the accumulated losses from before the company's transfer, the distributable withholding tax base is eliminated. If the company were to be re-established, there would be no accumulated losses to offset against. Consequently, the newly realised earnings remain as net profit and are subject in the event of a dividend payout to withholding tax. Thus it should be established in the case of de facto liquidated companies which have accumulated losses that the withholding tax implications as at the date of the reduction of the accumulated losses are not forgotten because of future earnings. It pays when selling a shell company to check at the time as to whether or not the withholding tax obligations can be fulfilled at the appropriate time in the reporting procedures and – if necessary and possible – to apply for the international reporting procedure by submitting the necessary forms to the Federal Tax Administration.

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