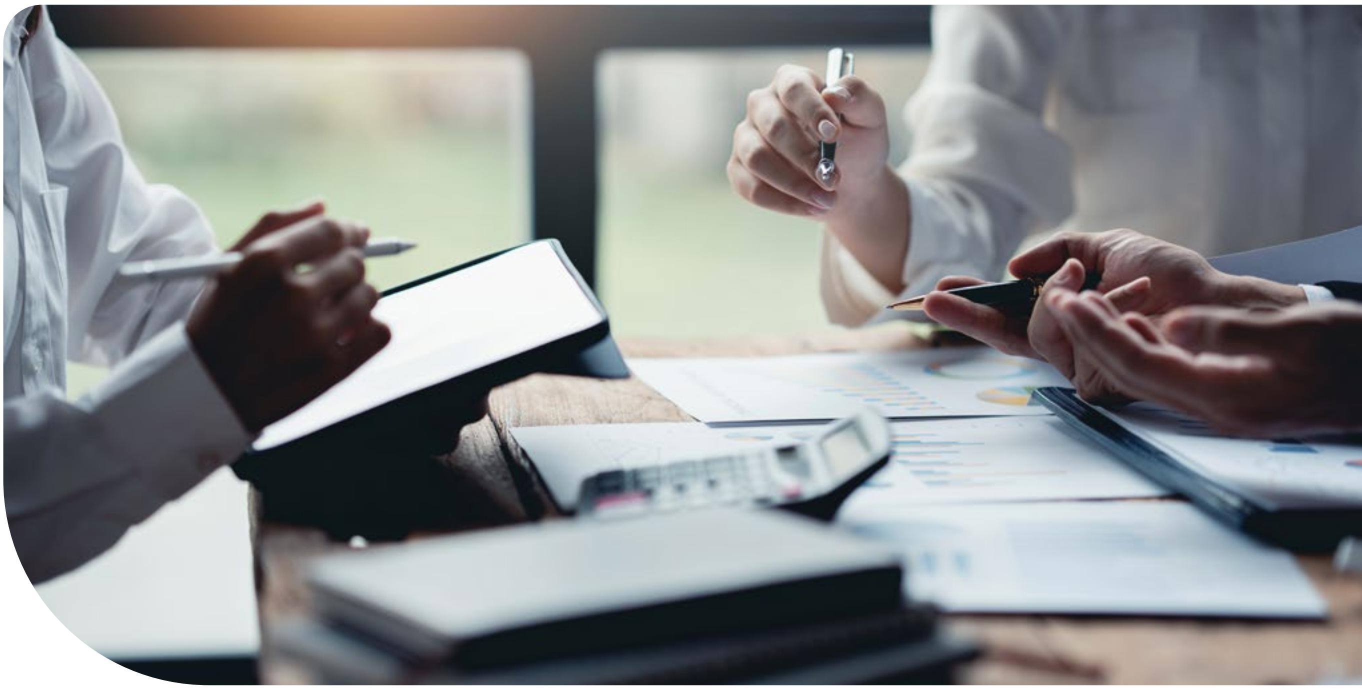


Financial restructuring: Claiming the CHF 10m Swiss stamp tax exemption threshold

The Swiss federal supreme court has ruled that taxpayers must decide whether they wish to claim the CHF 10m Swiss stamp tax exemption threshold or creation of qualified capital contribution reserves. The CHF 10m Swiss stamp tax exemption can only be claimed, if contributions/financial restructuring income are offset against losses that must be proven by a timely booking entry.

In general, a 1% Swiss stamp tax is levied on contributions to the equity of a Swiss company, whether in cash or in kind. A CHF 1m exemption threshold applies to the issuance of nominal share capital. Furthermore, the Swiss stamp tax law provides for an exemption for distressed companies for contributions of up to CHF 10m if losses are eliminated. Taxpayers must timely declare contributions and pay Swiss stamp taxes, if applicable.

According to Swiss tax law, the repayment of qualifying capital contribution reserves is treated like repayment of nominal share capital, and thus, is exempt from Swiss withholding tax. Thus, taxpayers typically want to avoid losing capital contribution reserves by offsetting such qualifying capital contribution reserves against losses.

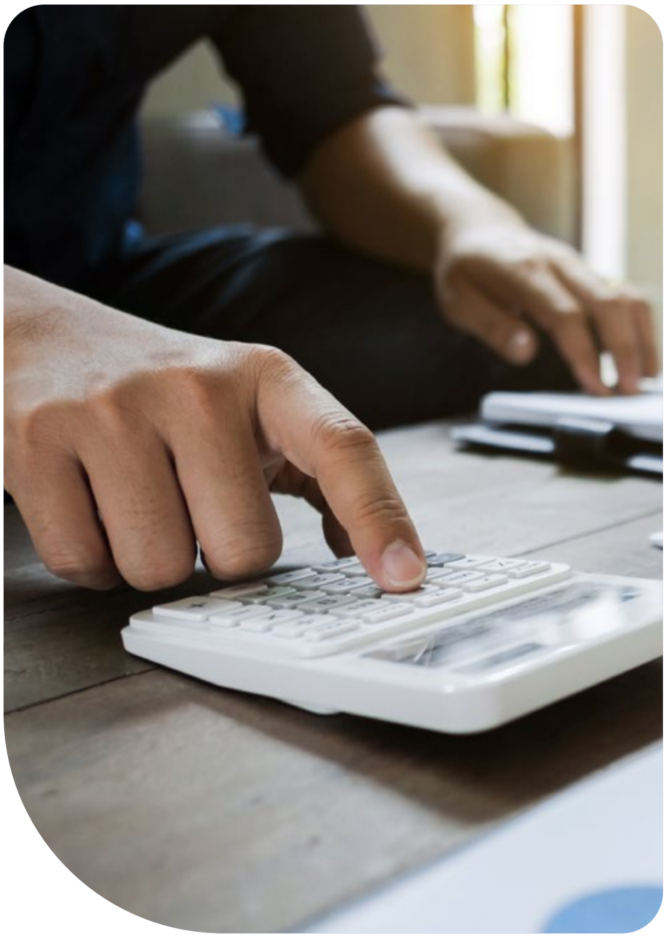
In practice, it was controversially discussed whether contributions/financial restructuring income can be sheltered or must accounting-wise be offset against losses (with an account statement proving the actual offset; debit: contribution, credit: loss), as the net value of the company remains the same at the bottom line.

Recently, the Swiss federal supreme court has ruled that the CHF 10m Swiss stamp tax exemption threshold can only be claimed, if contributions/financial restructuring income are offset against losses (i.e. derecognition of losses) that must be proven by a timely booking entry. Thus, a taxpayer must decide at the time of execution of a financial restructuring measure whether to claim the CHF 10m Swiss stamp tax exemption threshold or creation of qualified capital contribution reserves.

It is key that financial restructuring measures (whether a debt-equity swap, waiver, cash or in kind contributions, cash roundtrip, contribution agreement, capital decrease and subsequent increase, repurchase of a receivable, step-up of real estate properties and participations, factoring, bridge loan, assumption/release of debt etc.) are properly planned from an accounting, legal and tax perspective.

Proper planning not only ensures application of the CHF 10m Swiss stamp tax exemption threshold and qualifying capital contribution reserves but may also ensure that a further extended waiver of the Swiss issue tax in cases of obvious hardship can be claimed. In addition, planning may ensure application of an exemption from Swiss corporate income tax for contributions/financial restructuring income which may save tax loss carry forwards for Swiss corporate income tax purposes.

Grant Thornton Switzerland/Liechtenstein would be pleased to further advise.



Michael Tobler
Partner Corporate International Tax
Grant Thornton AG
T +41 43 960 71 50
E michael.tobler@ch.gt.com

Grant Thornton

grantthornton.ch