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Withholding tax refund rules should be expanded

Though a step in the right direction, the draft law currently circulated for consultation by the Federal Department of Finance, which aims to relax rules regarding the refund of the Swiss withholding tax, does not go far enough. The Federal Council should reformulate its proposal in order to better reflect the guarantee purpose of the withholding tax.

In Switzerland, corporations are required to withhold tax at source on any payment of interest or dividends they make. Swiss taxpayers can claim a refund of that tax when declaring these earnings as income. In recent years, the federal administration, with the support of the High Court, has become increasingly strict in applying this rule.

The Federal Council's proposed law maintains the right to claim a refund when earnings are declared retroactively, provided the following two conditions are met: the request is submitted before the end of the opposition period, and the initial failure to declare was the result of negligence. We believe these conditions are too restrictive and should be expanded.

First, when contesting a tax bill, taxpayers may in principle present new facts at the time they submit their opposition or when appealing a ruling in court. If either the taxpayer or the tax authorities become aware of a failure to declare earnings already subjected to withholding tax, the relevant income will be reflected in the final tax assessment. In this case, why not refund the withholding tax?

Second, the negligence clause is clearly designed to rule out intentional dissimulation. Our purpose is not to defend tax cheats who get caught red-handed; but what about the significant number of taxpayers who wish to regularise their situation through voluntary disclosure? The law encourages them to do so by waiving all fines the first time (thereafter, a fine of 20% of evaded taxes applies). But these taxpayers are ineligible for a withholding tax refund. After acquitting themselves of income tax at the applicable marginal rate (often close to 40%) on top of the initial 35% withholding tax, their total tax rate could be as high as 75%, which is practically confiscatory. After they have paid any income taxes owed, why not refund the withholding tax? Or is this a fine in disguise?

The Federal Council should reformulate its draft to better reflect the role of the withholding tax as a guarantee – one that is no longer needed once income taxes have been paid. In doing so, the government would more closely follow the intent of the parliamentary initiatives underlying this law, which requested that the right to claim a refund be retained "provided earnings are taxed."