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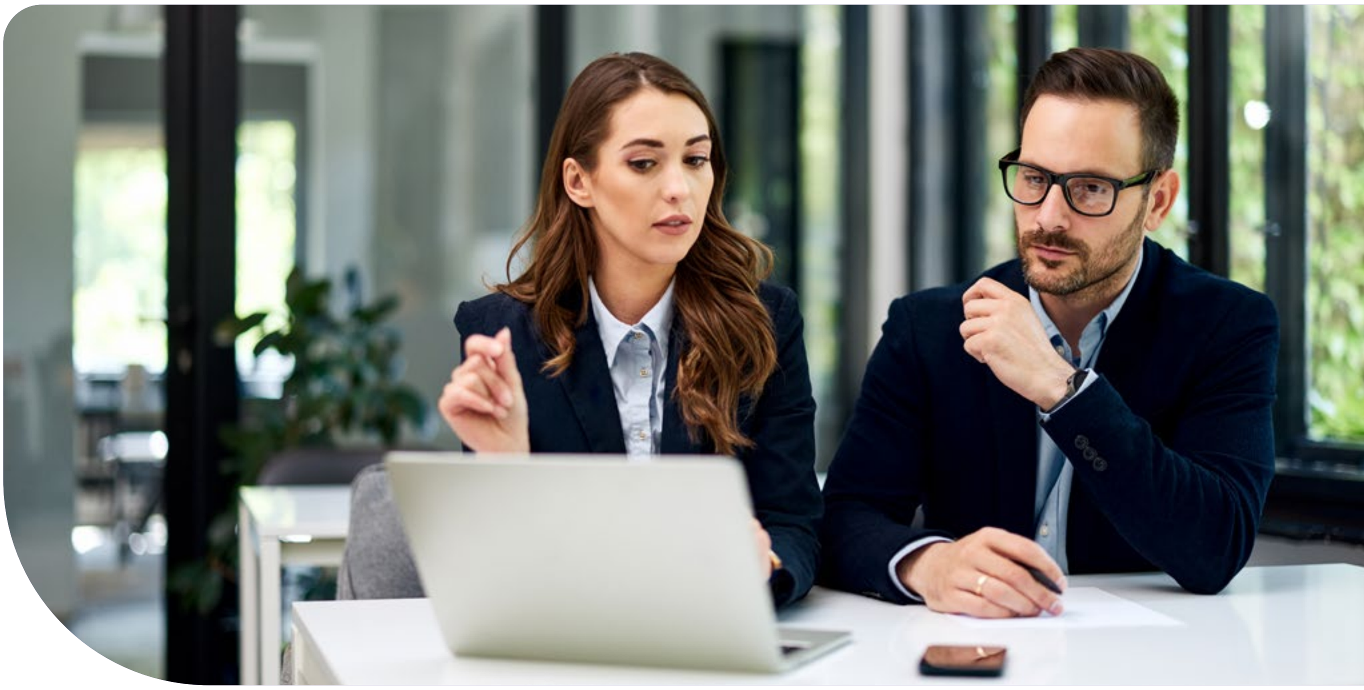

Waivers of claims by shareholders: The accounting treatment is decisive for the exemption from Swiss corporate income tax.

The accounting treatment of waiver income is crucial for determining its exemption from Swiss corporate income tax. Recently, the Swiss federal tax authorities issued a new circular letter (number 32a) addressing the financial restructuring of corporations and cooperatives. According to this guidance, waiver income from shareholders that is directly recorded in the company's equity should always be exempt from Swiss corporate income tax.

Generally, waiver income from shareholders is subject to Swiss corporate income tax. However, an exemption can be claimed if the receivable balance being waived by the lender is deemed to be hidden equity at the borrower's level, or if an unrelated third party would not have granted a loan under similar circumstances. Therefore, maintaining adequate documentation is essential to support the claim for exemption from Swiss corporate income tax.

As a fundamental principle, tax treatment follows accounting practices. Consequently, the accounting treatment is typically decisive for Swiss tax purposes. In practice, however, waivers or conversions from debt to equity have often been classified as taxable income, irrespective of whether they are recorded directly in equity or through the profit and loss statement. This has led to ongoing debates and court cases.

The recent circular letter (number 32a) clarifies that waivers of claims from shareholders, when directly booked in the company's equity, are considered as capital contributions and as such should be exempt from corporate income tax.

It is essential that financial restructuring measures – such as waivers, debt-equity swaps, cash or in-kind contributions, cash roundtrips, contribution agreements, capital decreases and subsequent increases, receivable repurchases, step-ups of real estate properties and participations, factoring, bridge loans, and debt assumption/release – are meticulously planned from accounting, legal, and tax perspectives. Proper planning and obtaining ruling clearance can help avoid potential adverse implications related to Swiss corporate income tax and issuance stamp taxes.

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

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