



Personal and Criminal Liability for Company Taxes in Switzerland

ACC Europe & Pestalozzi Breakfast Briefing

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What do board members, executives, and in-house counsels risk if the company does not meet its tax reporting or payment obligations?

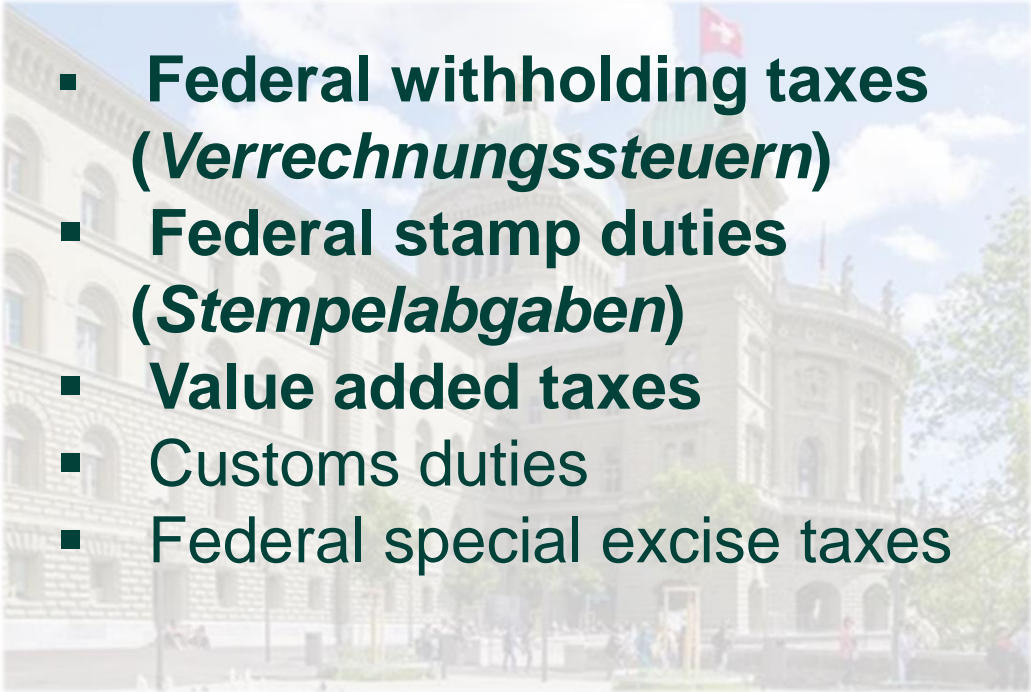
Internal responsibility
Market exposure

Personal Liability for
taxes and social security
contributions owed by
the company

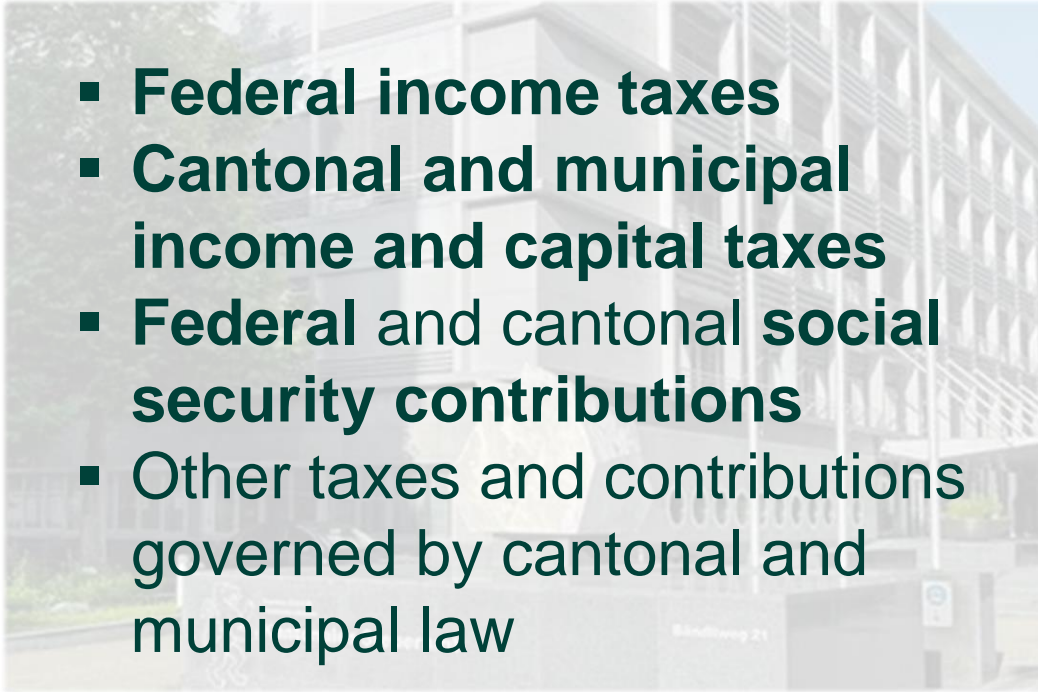
Criminal Liability:

Fines for minor offences
Penalties for tax evasion
and similar offences
Criminal prosecution for
tax fraud and the like

Federal Authorities

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- **Federal withholding taxes (*Verrechnungssteuern*)**
 - **Federal stamp duties (*Stempelabgaben*)**
 - **Value added taxes**
 - **Customs duties**
 - **Federal special excise taxes**

Cantonal/Municipal Authorities

- 
- **Federal income taxes**
 - **Cantonal and municipal income and capital taxes**
 - **Federal and cantonal social security contributions**
 - **Other taxes and contributions governed by cantonal and municipal law**

Pillar Two (QDMTT/IIR)

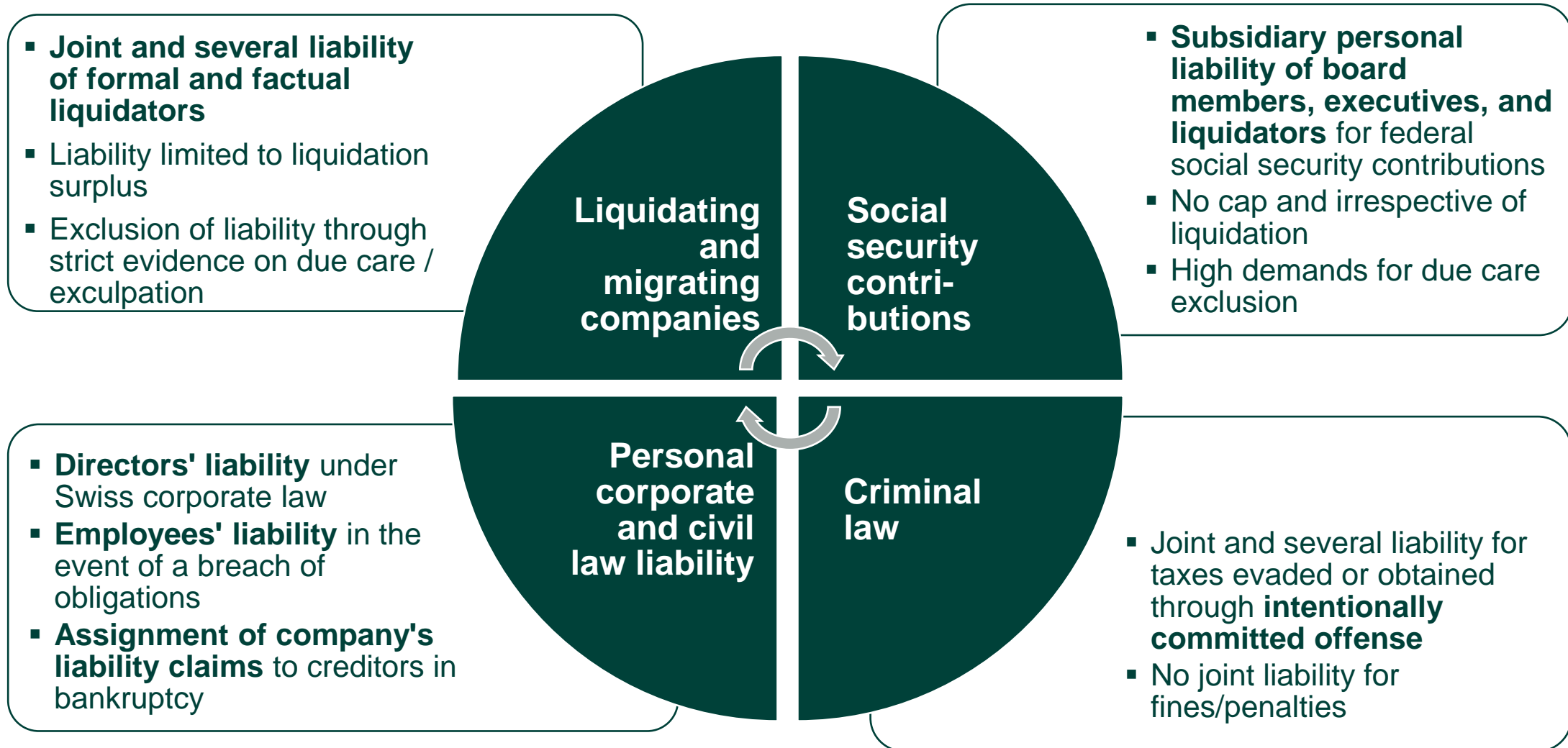
[This presentation covers the above-mentioned taxes in bold letters, which are governed or harmonized by Swiss federal law]



Personal Liability for Company Taxes



Personal Liability for Company Taxes – Overview



Personal Liability for Company Taxes – Case Study

Background

- US-based AllSecure Group aimed to enter the Swiss insurance market.
- New Swiss subsidiary established in early 2019.
- Two long-term employees seconded from the US to Switzerland for business development.

Challenges

- **COVID-19 Pandemic** impacted business operations.
- Swiss market was already saturated.
- Decision to close Swiss Operations taken in Summer 2023.

Liquidation

- US employees transferred back to the US by the end of November 2023.
- Liquidation process started in December 2023 and was completed in early 2025.

ESOP Program

- Employees benefited from Employee Stock Option Program (ESOP) of the US parent during their time in Switzerland.
- Significant profit from exercising options and selling shares in 2024 due to market recovery and favorable stock prices.

Personal Liability for Company Taxes – Case Study

ESOP Taxation in Switzerland

Granting of Options

No immediate tax consequences when options are granted (except for listed options).

Exercise of Options

Taxable event occurs when options are exercised (transfer of shares to the employee or cash settlement).

Taxable Income

The difference between the exercise price and the market value of the shares at the time of exercise is considered taxable income.

Social Security Contributions

This taxable income is also subject to social security contributions.

Sale of Shares

Any gain from the sale of shares is generally tax-free for private individuals, provided the shares are held as private assets.



- If the employee is no longer a Swiss tax resident at the time of exercise, Switzerland may still tax the portion of the income that relates to the period of employment in Switzerland.
- The taxable income from the exercise of options is also subject to Swiss social security contributions if the options were granted during the period of Swiss employment.

Personal Liability for Company Taxes – Case Study

Social Security Contributions

In principle, the social security contributions as well as the wage tax at source would be owed by the Swiss company that acted as employer. Since January 1, 2025, social security contributions and taxes can be enforced through bankruptcy proceedings if the debtor is registered in the Swiss commercial register. Previously, only seizure was allowed.

If the employer is a legal entity, the members of the board of directors and all individuals involved in management or liquidation are subsidiarily liable.

In cases where multiple individuals are responsible for the same damage, they are jointly and severally liable for the entire damage.

No liability for individuals with no fault.

Taxes

Joint and several liability of formal and factual liquidators.

Liability limited to liquidation surplus.

Exclusion of liability through strict evidence on due care / exculpation.



Bonus Question: What would have been the outcome if the options were only exercised in late 2025 (i.e., after the liquidation)?



Criminal Liability Exposure for Board Members, Executives and In-house Counsels in Tax Matters



Criminal Liability – Corporate Income & Capital Taxes

Degree of fault	Punishable Act	Criminal sanction	Enforcement	Comments
Negligence or Intent	Violation of procedural obligations (minor offences / (<i>Ordnungswidrigkeiten</i>))	Fine up to CHF 1k, up to 10k in severe or repeated cases; only in the event of an explicit warning	Cantonal or municipal tax administration	fine usually only imposed on company
	Completed Tax Evasion (contravention / <i>Übertretung</i>)	Company: fine between one third and three times the evaded tax. Participating individual: fine up to CHF 10k, up to 50k in severe or repeated cases	Limited enforcement measures Authorization of Federal Tax Administration for special investigation in severe cases	As opposed to the company or individuals acting for their own, tax evasion for incitement, abetment, and other participation requires intent
Intent	Attempt for Tax Evasion (contravention)	Fine of two thirds that would apply in the event of a completed intentional tax evasion		
	Abstraction of income withholding taxes (misdemeanor / <i>Vergehen</i>)			
Fraudulent behavior	Tax Fraud (misdemeanor)	Penalty or custodial sentence up to 3Y plus fine plus punishment for tax evasion	Ordinary criminal proceedings in front of cantonal criminal courts	Tax fraud requires use of false or falsified deeds ; usually separately punishable as forgery (felony)

Criminal Liability – Federal Stamp Duties, WHT & VAT

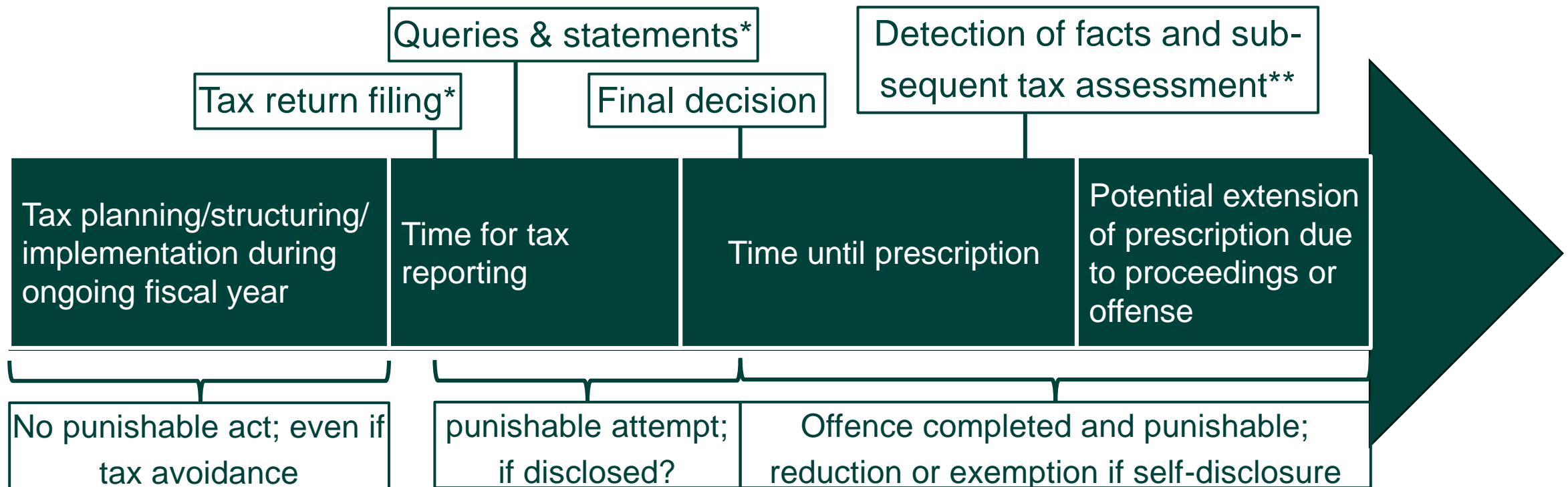
Degree of fault	Punishable Act	Criminal sanction	Enforcement	Comments
Negligence or Intent	Violation of procedural obligations (minor offences)	WHT & stamp duties: Max. CHF 5k fine VAT: max. CHF 10k fine	Federal Tax Administration; Federal Customs Authorities for import VAT (and customs duties); Federal Courts; Fines for WHT bagatelles and execution by cantonal authorities	Fine usually only imposed on company
	Tax Endangerment (contravention / <i>Übertretung</i>)	WHT & stamp duties: Max. CHF 20k fine; max. 10k for non-deduction of WHT		Possibility to sanction the company instead for max. CHF 8k stamp duties/WHT or max. CHF 100k VAT VAT: Accurate reporting while ignoring published practice is also punishable; acquisition/use of goods for which import VAT was not paid is punishable in the same way
	Tax Evasion (contravention)	WHT & stamp duties: fine max. CHF 30k or 3x evaded/obtained taxes VAT: fine max. CHF 400k or CHF 800k under qualifying circumstances or 2x evaded tax if criminal intent		
Intent	Qualifying VAT Evasion (misdemeanor / <i>Vergehen</i>)	Increase of fine by 50% max. 2Y years prison(solicitation/commercial approach)	Transfer to public prosecutor and ordinary criminal proceedings in front of cantonal criminal courts if requested or prison or similar sanction considered	
Fraudulent behavior	Tax Fraud (misdemeanor)	Penalty or custodial sentence up to 3Y plus fine plus punishment for tax evasion		
	Qualifying Tax Fraud (felony / <i>Verbrechen</i>)	Penalty or custodial sentence up to 5Y plus fine		

Criminal Liability – Social Security

Degree of fault		Punishable Act	Criminal sanction	Enforcement	Comments
Negligence or Intent		Violation of procedural obligations (art. 91 AHVG) (minor offences / <i>Ordnungswidrigkeiten</i>)	Fine up to CHF 1k, up to 5k in repeated cases [within 2 years]; only in the event of an explicit warning	Social Security Authority	
		Infraction (art. 88 AHVG) (contravention / <i>Übertretung</i>)	Fine of up to CHF 10k, unless the facts of Article 87 are met.	Limited enforcement measures	
	Intent	Offense (art. 87 AHVG) (misdemeanor / <i>Vergehen</i>)	Penalty of up to 180 daily rates, unless a crime or offense under the Criminal Code that carries a higher penalty is present	Ordinary criminal proceedings in front of cantonal criminal courts	Inter alia if failed to register or abstraction of social security contributions

Criminal Liability – Timeline "Mixed" Assessment Procedure

Corporate Income and Capital Taxes

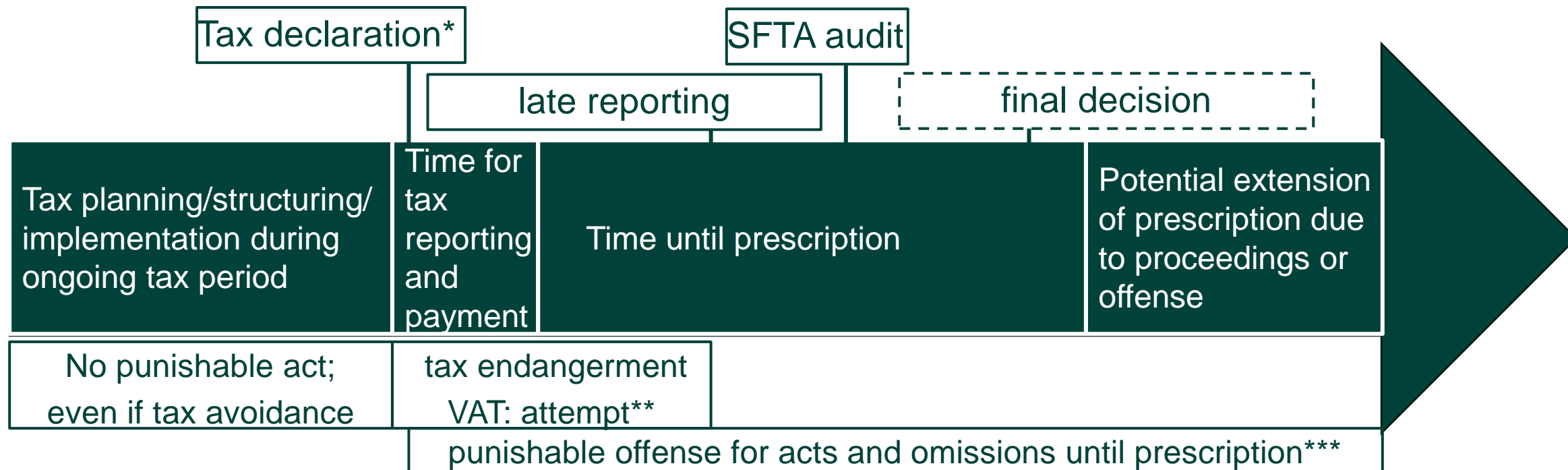


* The taxpayer has *generally* no responsibility for the correct legal characterization of the items declared

** Unless missing/incorrect facts were *obvious* based on the tax return

Criminal Liability – Timeline Self-Assessment Procedure

Federal Stamp Duties, WHT, VAT



* Reporting and payment of the tax upon own initiative, requiring the correct legal interpretation.

For VAT purposes, the taxpayer is even required to report according to published guidelines and otherwise state deviations.

** Depending on intention.

*** Unless settlement of WHT by mere notification?

Voluntary Disclosure without criminal Liability

Personal / Corporate Income and Capital Tax

Federal Stamp Duties and WHT

Value Added Tax

If the taxpayer voluntarily discloses tax evasion, prosecution will be waived if:

- a. The evasion is not known to any tax authority;
- b. The taxpayer unconditionally supports the administration in determining the back taxes; and
- c. The taxpayer makes a serious effort to pay the owed back taxes.

Only for the first time, for any subsequent voluntary disclosures, the penalty for tax evasion will be reduced to one-fifth of the evaded tax under the conditions of paragraph.

Based on administrative criminal law

Only for the first time for intentionally committed offences

Further voluntary disclosures have a positive impact on sentencing.

VAT law **does not stipulate the first-time** principle.

The voluntary disclosure without penalty by a company automatically exempts its executives as well.



Voluntary Disclosure without criminal Liability **does not exist** for Social Security Contributions!

Voluntary Disclosure – Case Study

Background

A new board member who is appointed CFO of a Swiss company detects irregularities. He discovers that the former CFO, who has also left the company, claimed significantly overstated expenses. It has been decided to claim these costs through civil law proceedings, but at the same time all authorities that may be affected should be proactively informed.

Corporate Income Tax

At the level of corporate income tax, no damage has essentially occurred. Since the CFO is not a shareholder, the overstated expenses would be reclassified as salary but would still be deductible for corporate income tax purposes.

Dividend Withholding Tax

As the CFO is not a shareholder the overstated expenses qualify as salary and not as constructive dividend.

Social Security Contributions

Social security contributions should be reported and pay as soon as possible. However, there is no right to voluntary disclosure without criminal liability.

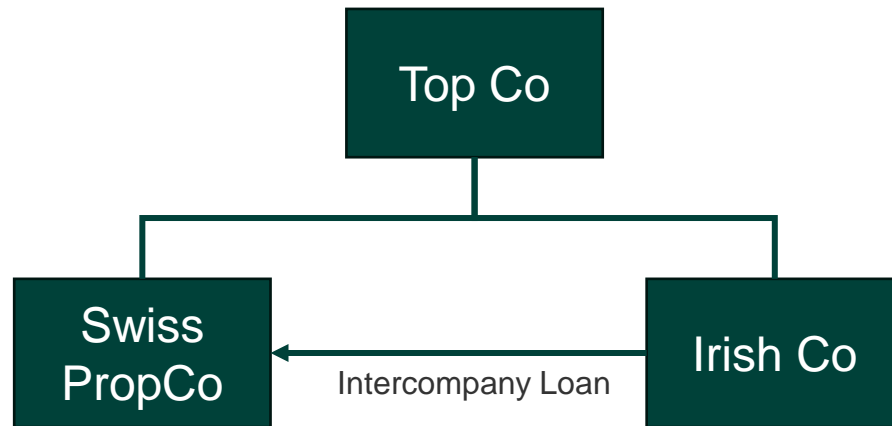
Personal Income Tax

If the company (or tax authority) informs the relevant tax authority at the CFO's place of residence, his personal right to voluntary disclosure without criminal liability is likely forfeited, as the matter is now known to the tax authority.

Rectification of salary certificate, otherwise company or other executives could face charges for participation in tax evasion?

Criminal Liability – Case Study: Facts

Swiss Supreme Court decision of February 3, 2025 (6B_90/2024)



- In 2011, IrishCo granted Swiss PropCo a loan of CHF 93,000,000 at an interest rate of 3.15% per year for five years.
- In 2014, a tax audit took place and The Cantonal Tax Administration of Vaud identified tax risks related to hidden equity and intercompany loan interest.
- Subsequently, Swiss PropCo received a memo from its advisor identifying tax risks and negotiation strategies. As suggested, Swiss PropCo prepared a transfer pricing study to support the 3.15% interest rate.
- The Cantonal Tax Administration contested the study and proposed a compromise interest rate of 2.5%, which Swiss PropCo accepted in January 2015.

Criminal Liability – Case Study: Proceedings

Swiss Supreme Court decision of February 3, 2025 (6B_90/2024)

Additional Background	Role	Key Issue	Federal Court Decision
<p>The Swiss Federal Tax Administration (SFTA) conducted a random audit and identified unjustified interest charges based on agreement with Cantonal Tax Authorities in Vaud.</p> <p>A. failed to declare taxable benefits to the SFTA, leading to an evaded tax amount of CHF 211,575</p> <p>The Cantonal Court of Vaud convicted A. in the second instance for intentional withholding tax evasion, imposing a fine of CHF 8,000. The first instance had acquitted A.</p>	<p>A. was responsible for accounting and tax matters at Swiss PropCo.</p>	<p>Whether A. knew about taxable benefits at the end of the declaration period.</p>	<p>The Federal Court upheld the lower court's assessment that A. was aware of the taxability of the benefits due to an adjustment made by the cantonal tax Authority for CIT purposes before the declaration deadline. The appeal was dismissed.</p>
	<p>Allegation</p> <p>A. allegedly failed to report taxable benefits to the SFTA based on the cantonal treatment.</p>	<p>It was not a topic whether the lower interest rate was correctly applied since Swiss PropCo did accept it for CIT.</p>	



Bonus Question: What would have been the outcome if the lender was a Swiss affiliate?



Conclusions and Key Takeaways



Key Takeaways (I)

- **Ensure tax compliance / consider company defense costs, taxes, and penalties – irrespective of personal exposure.**
- **Special diligence for liquidations and emigration transactions.**
- **CIT: Usually, no criminal exposure if diligence for compliance.**
- **WHT&VAT: Criminal exposure possible even in situations where acting in a company's best interest with due care.**
- **Documentation is key:**
 - **Transfer pricing file**
 - **Intercompany agreements (including schedules and regular updates)**
 - **Documentation of advice obtained from external counsel**
 - **Internal policies and manuals to ensure compliance**

Key Takeaways (II)

- **Mitigating exposure by proactive disclosure of critical transactions, including:**
 - **Advance Pricing Agreements**
 - **Tax Rulings**
 - **Discussions with tax authorities (including documentation)**
 - **Explanations in tax filings**
- **Aligning intercompany arrangements with the corporate structure to prevent WHT leakage in the event of a deemed dividend, in particular cross-border arrangements between direct parent and subsidiary**
- **Special care for typical pitfalls, including:**
 - **Intercompany financing arrangements**
 - **ESOP taxation**
- **Not lightly accept tax authorities' positions in audit.**

Questions?



Jonas Sigrist

Partner | Head of Tax

Attorney at Law | Swiss Certified Tax Expert

Pestalozzi Attorneys at Law Ltd

Feldeggstrasse 4

8008 Zurich, Switzerland

+41 44 217 93 26

jonas.sigrist@pestalozzilaw.com



Remo Keller

Partner

Swiss Certified Tax Expert

Pestalozzi Attorneys at Law Ltd

Feldeggstrasse 4

8008 Zurich, Switzerland

+41 44 217 92 78

remo.keller@pestalozzilaw.com



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