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Corporate Income Tax Subjects

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Switzerland

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1. General presentation of CIT in Switzerland

1.1. Switzerland as a Federal State

In the case of Switzerland, it is important to recall that this country is a Federal State levying corporate income tax (CIT) at Federal, Cantonal and Communal[1] level. Originally, the cantons were free to levy taxes based on their own legislation and the Federal State was having no competence in connection with direct taxes. The need to finance the Federal State during the two world wars led to the introduction of direct taxes at Federal Level[2]. As, in Switzerland, competences belong as a main rule to the cantons and is only delegated to the Federal State if the Swiss Constitution explicitly foresees it, an art. 128 was introduced in the Constitution, that allows the Federal State to levy direct taxes on (i) the income of individuals and (ii) on the net profits of corporations (legal entities)[3].

In parallel to the introduction of direct taxes at federal level, the need to harmonize the direct tax system among the cantons appeared in the second half of the 20th century[4]. A constitutional provision was therefore introduced in 1977[5], based on which the Federal Parliament enacted a Federal Law on the Harmonization of the Direct Taxes of the Cantons and Communes (FHL)[6]. This text, that became compulsory for all cantons in 2001, represents a framework legislation that sets in a binding way for the cantons the principles governing the levying of direct taxes with one important exception: the tax rates for which the cantons remain free[7]. Together with the FHL, the Federation adopted a Federal Law on Direct Federal Tax (DFTL)[8] that governs the levying of direct taxes at federal level. The DFTL and the FHL are based on the same principles and it is generally admitted that both Acts must be interpreted in the same way, leading to a *vertical harmonization* between the levying of direct taxes at cantonal and federal level[9].

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1 The communes follow the rule sets at cantonal level and their role is usually to collect a portion of the tax assessed at cantonal level.

2 See Markus Reich, Steuerrecht, 2nd edition, Zürich/Basel/Genf 2012, p. 188.

3 This provision is included in the revised Constitution of 1999. The first constitutional basis for the levying of direct taxes was included in 1950. For an overview on the history of the Constitutional basis for direct taxes at federal level, see Reich (note 2), p. 188. It is also interesting to note that this competence to levy direct taxes at Federal level was always limited in time. According to art. 196, cip. 13 of the Constitution, this competence expires in 2020, if not renewed by an amendment of the Constitution.

4 Reich (note 2), p 54; Message du Conseil Fédéral du 25 mai 1983 concernant les lois fédérales sur l'harmonisation des impôts directs des cantons et des communes ainsi que sur l'impôt fédéral, Feuille Fédérale (FF) 1983, Vol. III, p. 5 et seq.

5 In the revised Constitution of 1999, this corresponds to art. 129.

6 Loi fédérale sur l'harmonisation des impôts directs des cantons et des communes du 14.12.1990.

7 Reich (note 2), p. 55 f. and p. 195 et seq.

8 Loi fédérale sur l'impôt fédéral direct (LIFD) du 14.12.1999, in force since 1995 (hereinafter referred as « WHTL »).

9 Reich (note 2), p 200 et seq.

In this report, we will therefore limit our analysis to the rules applicable at federal level that, based on the FHL, will be mostly overtaken by the cantons. We will only mention possible differences between federal level and cantonal level when applicable.

In this report, we will also briefly touch base on the issue of withholding tax, as it is levied on distributions of CIT by corporations. In Switzerland, the withholding tax on dividend is levied only at federal level by the federal authorities[10].

1.2. Taxes levied on business profit

According to art. 1 DFTL[11], income tax is levied at the level of individuals and profit tax (referred hereinafter as "CIT") on corporations with legal personality. The law foresees important differences between income tax for individuals and CIT for corporations. In particular, the tax rates are progressive for individuals and flat for corporations[12] and the taxable basis is computed differently for these two types of payers. Note that in case of transparent business entities, income tax is levied at the level of the partners based on the income tax regulations for individuals, which includes wealth tax also on business assets. In case of opacity, CIT is levied at the level of the corporation and the profit tax is then computed on the net profit according to the financial statements, being understood that the tax authorities may apply possible retreatments for CIT purposes.

In addition, distributions performed by most of the CIT payers will be subject to a 35% dividend withholding tax on dividends.

1.3. Importance of corporations and of Corporate income tax

In Switzerland, less than half of all businesses (47%)[13] are organized in the form of corporations with legal personality and with an equity divided in shares[14] and almost 50% of businesses enjoy legal personality[15]. 99.6% of the businesses are SMEs employing less than 249 full-time employees (FTE)[16]. Among the bigger companies with more than 250 FTE (representing 0,36% of the number of businesses), 78,6% are organized as *sociétés anonymes*, 84,2% have the form of corporations with legal personality and with an equity divided in shares and 94,28% enjoy legal personality[17].

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[10] The Swiss withholding tax is also due on certain type of interest payments if paid in connection with a bond or by a bank. As the tax liability depends here on the nature of the borrowing (qualification as a bond or not) or of the business (qualification as a bank or not) and not on the nature of the tax subject, we will not expend on this withholding tax levied on interest payements.

[11] That corresponds to art. 2 FHL.

[12] Nominal profit tax rate at federal level: 8,5%. On this rate, it is necessary to add the cantonal and communal tax rates that vary from canton to canton.

[13] See *Office fédéral de la statistique* available on internet under : http://www.bfs.admin.ch/bfs/portal/fr/index/themen/06/02/blank/key/01/rechtsnorm.html. 47% of the businesses are organized as *Société anonomye*, *Société à responsabilité limitée* or as *coopératives*.

[14] *Sociétés de capitaux* or *Kapitalgesellschaften*.

[15] This includes associations and foundations. See interactive databank of the *Office federal de la statistique* on internet under: http://www.pxweb.bfs.admin.ch/dialog/statfile.asp?lang=2.

[16] See *Office fédéral de la statistique* available on internet under : http://www.bfs.admin.ch/bfs/portal/fr/index/themen/06/02/blank/key/01/groesse.html.

[17] See *Office fédéral de la statistique* available on internet under : http://www.bfs.admin.ch/bfs/portal/fr/index/themen/06/02/blank/key/01/groesse.html.

In 2011, the total income and profit tax levied at federal level represented 18 billion, i.e. 27.8% of the total Federal tax income[18]. Based on 2009 figures, 46% of the total Federal direct tax was paid by corporations (profit tax)[19] and 54% by individuals (income tax).

2. Legislative techniques

2.1. Sources

For CIT purposes, the definition of the tax subject, in particular transparency or opacity of businesses, is defined in the tax law (DFTL), as mentioned here below under 2.2. The DFTL defines namely which business entity is treated as a separate tax payer liable to pay CIT and in which cases the business profit is taxed at the level of the business owners (transparency).

For withholding tax purposes, the law also defines in which case business profit distributions are subject to dividend withholding tax (see below 2.2).

2.2. Legal drafting

The law provides for a specific enumeration of business entities treated in transparency as well as of corporations and businesses treated in a non-transparent way. First, art. 10 DFTL[20], relates to the income tax of individuals and provides for a list of transparent structures taxable at the level of their owners: art. 10, para. 1 DFTL lists the various types of partnerships treated in a transparent way[21] and art. 10, para. 2 DFTL states that investment funds are transparent, with the exception of real estate funds as we will see here below under 3.2.3 b. In the section of the DFTL dedicated to profit tax for legal entities, art. 49 DFTL[22] provides for a list of entities subject to CIT on their own and therefore non-transparent. Art. 49, para. 1, lit. a DFTL provides that corporations with an equity divided into shares (*sociétés de capitaux*) are subject to tax and gives an explicit list of legal forms falling in this category[23]. Art. 49, para 1, lit. b DFTL mentions associations, foundations and "other legal persons" (see below 3.2.2), thus allowing to make sure that all entities with legal personality are treated as CIT-subject[24].

Besides legal provisions dealing with transparent entities (art. 10 DFTL) and with non-transparent CIT-subjects (art. 49 DFTL) the Swiss law also provides for a special case in connection with foreign entities, including partnerships, taxable in Switzerland. Art. 11 DFTL, together with art. 49, para. 3 DFTL provide namely that such foreign entities with a limited tax liability in Switzerland are treated as separate CIT-subject as it will be shown below under section 4.1. Finally, note that in certain cantons, an estate is taxed as a separate entity in case of

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[18] Data available on the website of the Swiss Federal Tax Administration, under http://www.estv.admin.ch/org/01257/index.html?lang=fr.

[19] Data available on the website of the Swiss Federal Tax Administration, under http://www.estv.admin.ch/dokumentation/00075/00076/00701/01363/index.html?lang=fr.

[20] Art. 7, para. 3 FHL has the same content and is binding for the Cantons.

[21] Art. 10, para. 1 DFTL mentions the following partnerships: *société simple, société en nom collectif* and *société en commandite*.

[22] Art. 20 FHL has the same content and is binding for the Cantons.

[23] *Sociétés anonymes, sociétés en commandite par actions, sociétés à responsabilité limitée, sociétés cooperatives*.

[24] Peter Locher, Kommentar zum DBG, Bundesgesetz über die direkte Steuer, Band II, Therwil/Basel 2004, ad art. 49, n. 4.

uncertain successions[25]. In this case however the taxation is based on the rules applicable to income tax for individuals and not to CIT.

Regarding Swiss withholding tax, the law provides for a very precise definition of dividends subject to withholding tax in art. 4, para.1, lit. b WHTL.

3. Domestic entities

3.1. Overview

As a general principle, an entity with legal personality is supposed to be a separate CIT-subject[26]. Indeed, based on the Federal Constitution (art. 128 Cst), art. 1 DFTL provides that the Federation is entitled to levy profit tax on legal persons[27]. Hence, Swiss tax law relies on the legal personality to define whether a business entity is transparent or not, except in the cases discussed below under section 3.2.3. Other entities are treated in a transparent way. The reason for the transparency for partnerships is not explicitly mentioned in the literature. To our view, the fact that the law provides that the State can levy a profit tax at the level of corporations with legal personality, refers to a legal approach of the vehicle and limits the levying of CIT for this type of corporations[28].

Furthermore, in the context of a recent modification of the tax system for shareholders, the question of the tax neutral treatment of businesses in connection with legal forms was very much debated among the scholars[29]. For certain, defending the so-called "Integration Theory"[30], corporations are supposed to have no independent economical contribution capacity and should not be taxed independently from their shareholders. For others, representing the "Separations Theory"[31], companies with legal entities must be taxed without considering their owners. In practice, this second theory is applicable in Switzerland and has been *de facto* confirmed by the Supreme Court recently[32].

It must be noted that transparency doesn't mean that the partnership is entirely disregarded for tax purposes. In particular, the partners do not have to declare each individual item of revenue and expense at their own level. In the contrary, they only need to report their share in the net profit[33]. However, it remains that the partnership is not a CIT-subject on his own and that the reporting obligations (e.g. filing of the tax return) is performed by each of the partners based on

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25 E.g. §9, para. 2 of the Zurich Tax Law; see also Reich (note 2), p. 234.

26 Xavier Oberson, Droit fiscal Suisse, 4th edition, Basel 2012, §9 n. 3; Sarah Dahinden, Die Abschirmwirkung ausländischer Gesellschaften im schweizerischen Steuerrecht, Zürich 2003, p. 45; Pierre-Marie Glauser, Transparence fiscale: vers un nouveau mode d'allocation internationale du profit dans les groupes de sociétés, Revue fiscale 2006, vol. 7, p. 488.

27 *Personnes morales*.

28 In this sense: Peter Locher, Kommentar zum DBG, Bundesgesetz über die direkte Steuer, Band I, Therwil/Basel 2001, ad art. 10 n. 12.

29 For an overview of the issue: Reich (note 2), p. 437 ff.

30 Markus Reich, Die wirtschaftliche Doppelbelastung der Kapitalgesellschaften und ihrer Anteilsinhaber, Zurich 2000, p. 32 et seq.

31 Locher, note 24, Einführung zu Art. 49, n. 19; Xavier Oberson, Fondements et perspectives d'une imposition des entreprises neutre quant à la forme („rechtsformneutrale Unternehmensbesteuerung"), in: Archives de droit fiscal 70 (2001/2002), vol. 5, p. 263

32 Reich (note 2), p. 439; see also for instance: Decision of the Swiss Supreme date June 28, 2011 (2C_628/2010), in : Revue fiscale 2011, p. 777 .

33 Irene Salvi, Schweizerische Besteuerung von internationalen Personengesellschaften, Archives de droit fiscal 64 (1995/96), Vol. 4, p. 183 et seq.

his *pro rata* interest in the business[34]. In addition, the fact that income is generated at the level of the partners through a (transparent) partnership doesn't modify the nature of the relevant income nor its tax impact at the level of the partners[35]. This means for instance that this income is added to the other incomes of the partners to compute the tax rate. Furthermore, if the income received through the transparent entity benefits from a specific tax regime, it will be applicable, on a *pro rata* basis, to the partner[36].

3.2. Corporate tax subject in Switzerland (more detailed approach)

3.2.1. Link with company law

For CIT purposes, the tax law relies on the legal personality according to private law[37]. For pure domestic matters, this already derives out of the DFTL (art. 10 and 49 DFTL) that refers to the legal forms of corporate law. The private law is also relevant on international matters[38]. Indeed, as far as foreign corporations are concerned, International Private Law refers to the so-called "Incorporation Theory"[39], as stated in art. 154 of the Swiss Law on International Private Law[40]. According to this principle a foreign corporation is ruled by the laws of the country of incorporation. This principle is applied strictly in Switzerland, except in the very exceptional cases where the application of the foreign law would violate the Swiss "*ordre public*"[41].

As private (civil) law is relevant for tax purposes, no "opting in" or "opting out" is available to become or escape the CIT-subject nature. Either the legal form chosen corresponds to a corporation with legal personality or not, with consequences on CIT level[42]. In this regard, one-person-companies are considered as legal entities[43] and therefore do have a character of CIT-subject.

Regarding withholding tax, art. 4, para. 1, lit. b WHTL defines the dividends subject withholding tax with a reference to the legal form based on private law[44]. Only distributions made out of corporations listed in the law are subject to the dividend withholding tax.

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34 Locher, note 28, ad art. 10, n. 1.

35 Salvi, note 33, p. 184.

36 Salvi, note 33, p. 185. For instance, if a corporation is partner of a transparent entity and receives dividends through this partnership, it can claim for the privileged taxation on dividends, provided the conditions are fulfilled, in particular in connection with the percentage of ownership.

37 Locher, note 28, ad art. 10, n. 1ss; Locher, note 24, ad art. 49, n. 4; Reich (note 2), p. 442 and 447; Salvi, note 33, p. 181; Hans Wipfli, Besteuerung der Vereine, Stiftungen und übrigen juristischen Personen, Basel 2001, p. 195.

38 Andrea Opel, Familienstiftung und Trust, Postulat für ein kohärente Besteuerung, Archives de droit fiscal 78 (2009/2010), vol. 5, p. 269 with various references.

39 Reich (note 2), p. 442; Salvi, note 33, p. 181.

40 *Loi fédérale sur le droit international privé du 18.12.1987.*

41 See Glauser, note 26, p. 490 et seq.

42 Salvi, note 33, p. 182.

43 Locher, note 24, Einführung zu Art. 49ff, n. 15, 22.

44 Marco Duss/Andreas Helbing/Fabian Duss, in: Zweifel/Beusch/Bauer-Balmelli (editors), Kommentar zum schweizerischen Steuerrecht, Bundesgesetz über die Verrechnungssteuer, 2nd edition, Zürich 2012, ad art. 4 n. 118.

3.2.2. Charitable organizations and associations

Art. 49, para. 1, lit. b DFTL refers specifically to associations, foundations and "other legal entities". Therefore, charitable organizations, usually incorporated as foundations and associations, are subject to CIT as far as they are incorporated under private law[45]. The taxable basis of entities referred to in art. 49, para. 1 lit. b DFTL benefits from specific rules compared to other corporations and is taxed under a reduced rate (art. 71 et seq.). Moreover, the law provides in art. 56, lit. g DTFL for full exemption for non-profit entities pursuing a goal of public interest.

The "other legal entities" mentioned in art. 49, para. 1, lit. b DFTFL also include the public bodies with legal personality[46]. It concerns in particular the Federal State, the cantons and the municipalities, including their various corporations based on public law *(Etablissements publics*). On the other hand, art. 56 lit. a to c DFTL provides for a tax exemption for Swiss public bodies (federation, cantons and Swiss municipalities, as well as their public bodies).

The fact that art. 56 DFTL exempts charitable organizations as well as public bodies, doesn't mean that these entities are not recognized as CIT-subject. In the contrary, only a tax subject can benefit from an exemption. First, this is important due to the fact that the tax exemptions stated in art. 56 DFTL do not cover all entities mentioned in art. 49, para. 1, lit. b DFTL, like for instance associations and foundations that do not meet the criteria for an exemption as non-profit charities or like foreign public bodies that would have a taxable presence in Switzerland. Second, even if tax exempted under art. 56 DFTL, these legal entities may be taxable at cantonal level on capital gains connected to real estate as various cantons have in this case a specific tax applicable also for exempted entities[47].

3.2.3. Specific structures

In this section, we will comment specificities of the definition of CIT-subject for domestic entities, in particular investment funds, and briefly mention the case where the tax administration is entitled to make a "look through" approach for legal entities. As Swiss law doesn't know he institution of (Swiss) trusts, we will refer to these entities here below in connection with foreign entities, under section 4.1.2.

a) Investment funds and SICAVs

As a general principle, investment funds are treated as transparent entities[48]. This is explicitly mentioned in art. 10, para. 2 DFTL that precises that each of the investors has to add to its own income revenues performed through a collective investment in the meaning of the Swiss Law on Collective Investments of June 23rd, 2006 (hereinafter, referred as "SCIL"). Art. 10, para. 2 DFTL however mentions one exception: investment funds with direct ownership in real estates

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45 Wifpli, note 37, p. 195 et seq.; Jacques-André Reymond, L'assujettissement des personnes morales, Archives de droit fiscal 61 (1992/93), Vol. 5/6, p. 345.

46 *Oeffentlich-rechtliche Anstalten / établissements de droit publics*; see Locher, note 24, ad art. 49 n. 13; Wifpli, note 37, p.197.

47 E.g. art. 61, para. 1, lit. c of the Vaud cantonal Law on cantonal direct taxes (LI VD); art. 62 LI VD provides for an exemption for the Vaud State and the Swiss Confederation, but not for other Cantons.

48 Toni Hess/Patrick Scherrer, Die Besteuerung der kollektiven Kapitalanlagen gemäss Kollektivanlagegesetz und deren Anleger, Archives de droit fiscal 77 (2008/2009), Vol. 6/7, p. 385; Stefan Oesterhelt, in: Watter et al. (editors), Basler Kommentar über Kollektivanlagengesetz, Vor Art. 1, Besteuerung von transparenten kollektiven Kapitalanlagen, Basel 2009, n. 1 et seq. Circular letter of the Federal Tax Administration no 25, March 25th, 2009 ("*Imposition des placements collectifs de capitaux et de leurs investisseurs*").

(see below section b). Another specific treatment is also applicable to SICAF (see below section c).

The tax law explicitly refers to the definition of collective investments regulated by the SCIL. Art. 7 SCIL gives a definition of collective investments[49] that imply a joint investment of funds by investors, which invest funds to be managed by the fund. Of course, art. 2 SCIL provides for several exceptions based on the nature of the activity (business activity, social security, holding companies, etc.). In any case, the definition of collective investments applies regardless the legal form used for the fund (art. 2 SCIL). It concerns contractual forms of collective investment funds, but also collective investments organized in the form of corporations, in particular the SICAVs[50]. This type of entity has the legal personality[51] and, excepts the specificities in the SCIL, is ruled by the provisions applicable to "*sociétés anonymes*"[52].

Despite its character as a corporation and the fact that it enjoys legal personality, the SICAV is treated tax wise in transparency[53]. This derives out of art. 10, para. 2 DFTL and out of art. 49, para. 2 DFTL *e contrario*. The first provision mentions that income out of investment funds is allocated to the investors directly; the second that SICAFs are to be treated as CIT-subjects[54]. The reason for this specific treatment for SICAVs is the will to apply the same rule to all type of investment funds (*same business same rule*)[55]. Therefore, regardless of the nature of its investments, the SICAV is not a CIT-subject, except if it owns real estates in direct ownership (see below section 3.2.3, lit. b)[56].

Also the investment fund (regardless the way it is organized) is not a CIT-subject, it is not treated in a transparent manner from the point of view of the tax object and of the timing of allocation of revenues to the investors. Indeed, the income is attributed to the investors when distributed[57] or when it is credited on the account of the investors[58]. From the standpoint of the investor, the transparency is therefore only partial[59]. However, regarding the nature of the income generated by the fund, the Swiss tax law follows the logic of transparency: incomes generated by the fund are treated at the level of the investors as if they were realized directly. This means in particular that capital gains generated by the fund are treated as such at the level of the investor, i.e. are tax free at the level of private holders of the fund. This is however subject to the condition that capital gains can be identified clearly, e.g. that they are distributed based on a separate coupon[60].

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[49] « *Les placements collectifs sont des apports constitués par des investisseurs pour être administrés en commun pour le compte de ces derniers. Les besoins des investisseurs sont satisfaits à des conditions égales* ».

[50] The SICAV are regulated in art. 36 et seq. SCIL.

[51] Art. 36, para. 1 SCIL.

[52] Hess/ Scherrer, note 48, p. 375 et seq.; Oesterhelt, note 48, n. 7.

[53] Hess/ Scherrer, note 48, p. 407; Oesterhelt, note 48, n. 8.

[54] Hess/ Scherrer, note 48, p. 407.

[55] Hess/ Scherrer, note 48, p. 407.

[56] The SICAV is also transparent if it owns real estates through real estate corporations (so-called indirect ownership); see: Hess/ Scherrer, note 48, p. 385.

[57] For so-called „*fonds de distribution*". For details on the tax treatment of the investors holding investment funds and for a definition of the "*fonds de distribution*", see: Circular letter no 25, note 48 and Hess/ Scherrer, note 48, p. 385.

[58] Fo so-called „*fonds de thésaurisation*". for a definition of the "*fonds de thésaurisation*", see: Circular letter no 25, note 48, in particular section 4.1. and Hess/ Scherrer, note 48, p. 385.

[59] Hess/ Scherrer, note 48, p. 385.

[60] Circular letter no 25, note 48, section 3.3.2; Locher, note 28, ad art. 20, n. 151 et seq.; Hess/ Scherrer, note 48, p. 394.

For withholding tax purposes, the situation is different. Art. 4, para. 1, lit. c WHTL provides for a specific provision submitting the return out of investment fund to the 35% Swiss withholding tax. Consequently, for the purpose of the Swiss withholding tax, the funds are not considered as transparent[61] regardless whether they are organized as a SICAV or as a contractual fund[62]. On the other hand, the withholding tax legislation does not apply the opacity-principle consequently. In particular, the timing of the levying of withholding tax follows the rules applicable to the taxation of the investors: the tax is due upon distribution for so-called distribution funds and upon credit on the account of the investors for "non-distribution funds" (*fonds de thésaurisation*)[63]. In addition, also for withholding taxes, the logic of transparency is applied to the nature of the income, as distributions deriving out of capital gains can be exempt from withholding tax if they are distributed based on a separate coupon[64].

b) Investment funds with direct ownership in real estate

Investment funds can invest in real estate either by owning it directly or by holding real estate companies[65]. In the first case, the fund holds a direct ownership in the real estate (so-called: funds with "direct ownership")[66], which is possible for Swiss or foreign real estate[67]. This real estate ownership can take place within contractual investment funds or with SICAVs[68]. SICAF can also own real estate but, in this case, no specific tax treatment is applicable, as the SICAF is an ordinary CIT tax payer (see below section 3.2.3, lit. c))[69].

To the extent that they own real estate in direct ownership, the funds are treated, for this part of their activity, as corporations (art. 49, para. 2 DFTL). The fund becomes a separate CIT-subject for the income and the net equity linked to its direct ownership in real estate. It is then treated like an "other legal person", i.e. like an association or a foundation, subject to a reduced CIT rate (art. 66, para. 3 DFTL). Unlike ordinary corporations, the fund has then only to declare the income deriving out of his direct ownership in the real estate and its taxable basis is limited to this type of income (art. 66, para. 3 DFTL) [70]. In other words, the income realized by the fund in connection with other assets (portfolio, indirect ownership in real estate, etc.) is not included in the taxable basis of the fund and falls under the regime of transparency described above under section a). Therefore, funds with direct ownership in real estate are partly non-transparent[71] as they are only subject to CIT for the income out of the real estates, but not for other incomes. This special treatment can be explained by the will to reach a certain level of simplicity, in particular in the context of intercantonal allocation of profit[72]. The legislator was concerned that, in case of transparency, it would become very difficult to define where to tax the various investors and

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61 Hess/ Scherrer, note 48, p. 388; Oesterhelt, note 48, n. 35.
62 Hess/ Scherrer, note 48, p. 408.
63 See above note 57and 58.
64 Hess/ Scherrer, note 48, p. 388.
65 Art. 59, para. 1, lit. a and b of the Swiss law on collective investment of June 23rd, 2006.
66 Hess/Scherrer, note 48, p. 383.
67 Heuberger, note 68, n.362.
68 Hess/Scherrer, note 48, p. 383; Reto Heuberter, in: Watter et al. (editors), Basler Kommentar über Kollektivanlagengesetz, Vor Art. 1, Besteuerung von kollektiven Kapitalanlagen mit direktem Grundbesitz, Basel 2009, n. 355.
69 Heuberger, note 68, n. 355.
70 Peter Athanas/Giuseppe Giglio, in: Zweifel/Athans (editors), Kommentar zum Schweizerischen Steuerrecht I/2a, Bundesgesetz über die direkte Bundessteuer, Art. 1-82, 2nd edition, Basel 2008, ad art. 49 n 6; Georg Lutz, in: Zweifel/Athans (editors), Kommentar zum Schweizerischen Steuerrecht I/2a, Bundesgesetz über die direkte Bundessteuer, Art. 1-82, 2nd edition, Basel 2008, ad art. 66, n. 9Hess/Scherrer, note 48, p. 415 et seq.; Heuberger, note 68, n. 359 et seq.
71 Heuberger, note 68, n. 360.
72 Locher, note 24, ad art. 40, n. 16; Lutz, note 70, ad art. 66, n. 9; Oberson, note 26, § 9 n. 7.

could lead to the necessity for them to register in the various cantons where the real estates are located.

Unlike other ordinary CIT-subject, no economical double taxation applies to real estate investment funds with direct ownership. Art. 20, para. 1 lit. e DFTL provides that investors only have to declare the income out of investment funds that was not already taxed at the level of the fund, e.g. income on other investments[73]. Consequently, if a fund has invested all its assets in directly owned real estate, the investors do not need to declare any income or any wealth linked to this investment[74]. Although art. 20, lit. e DFTL is applicable to private individual investors and despite the fact that the DFTL contains no specific provision for business investors, the same rule applies in practice to them by analogy[75].

Unclear and debated is whether the fund, as a CIT-subject, has to declare capital gains linked to the sale of directly owned real estate or whether it is only liable to CIT for returns out of his real estate (*rendement*). Certain authors[76] consider that capital gains are not included in the taxable basis of the fund, at least at federal level[77,78]. Others[79] are willing to make a difference depending on the nature of the investor. In practice, the Federal Tax Administration[80] takes the view that capital gains are treated as income and taxed at the level of the fund[81].

Despite the CIT tax treatment of real estate funds as separate tax subjects, art. 5, para. 1, lit. b WHTL provides for a withholding tax exemption for distribution deriving out of real estate income, provided it is paid with a distinct coupon. This applies for any fund owning real estate in direct ownership, except for SICAF (see below section 3.2.3, lit. c)).

c) SICAF

The SICAFs are regulated in art. 110 SICL. Although they fall under the SICL and despite the *same business same rule* concept, the SICAFs are considered as non-transparent entities and treated as ordinary corporations for CIT purposes. This is explicitly mentioned in art. 49, para. 2 DFTL[82]. Consequently, investors are treated as ordinary shareholders[83], regardless the nature of the income distributed to them. Similarly, distributions made by SICAF are subject to withholding tax with no specific exemption, even if the SICAF owns real estate in direct ownership.

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73 Locher, note 28, ad art. 20, n. 162; Heuberger, note 68, n.394.

74 Locher, note 28, ad art. 20, n. 162.

75 Circular letter no 25, note 48, section 5.1.4; Heuberger, note 68, n. 390.

76 Toni Hess, Die Besteuerung der Anlagefonds und der anlagefondsähnlichen Instrumente sowie deren Anteilsinhaber in der Schweiz, Zürich 2001, p. 231; Locher, note 24, ad art. 66, n. 26; Bernard Rolli, in: Yersin/Noël (editors), Commentaire Romand de la loi sur l'impôt federal direct, Bâle 2008, ad art. 66 n. 18.

77 Hess, note 76, p. 231 takes the view that the fund as a CIT subject must not declare the capital gain in the CIT basis at federal level, but shall at cantonal level. The difference is due to the fact that capital gains on real estate are tax exempt at federal level but not at cantonal level. This solution allows to apply the rules on taxation of funds with direct ownership in a tax neutral way.

78 For an overview of the problem of capital gain taxation in the cantons, see Heuberger, note 68, n. 364.

79 Lutz, note 70, ad art. 66, n. 14.

80 Circular letter no 25, note 48, section 3.2. and 5.1.1.

81 The canton of Geneva has clearly taken the view that capital gains needed to be treated as income at cantonal level: see art. 18, para. 3 of the Geneva Law on Corporate Income Tax dated September 23rd, 2004.

82 Athanas/ Giglio, note 70, ad art. 49 n 6.

83 See Circular letter no 25, note 48, section 3.3.2 *in fine*.

d) Transparency of corporations

As mentioned above, entities with legal personality are usually treated as separate CIT-subject (opacity). In certain cases, however, despite the legal existence of the entity, the tax administration is entitled to "pierce the corporate veil" and apply transparency[84]. This is however not based on a specific legal basis, even within a group of companies[85]. Indeed, Switzerland has no specific "grouping" regulations and doesn't know CFC rules that would treat subsidiaries in a transparent way[86]. In other words, companies are always taxed at individual level, *per se* and independently from their shareholders.

The conditions for disregarding the legal reality have been set by the Supreme Court in a limited number of cases[87] and are based on the concept of abuse of law[88]. The Supreme Court has in particular ruled for direct taxes[89] and, even more recently for VAT[90], that if the application of the legal reality is clearly abusive and cannot be explained by other than tax reasons[91], a « look through approach » can be adopted. However, this should remain very exceptional, as emphasized by most of the scholars, who adopted a very critical approach on this jurisprudence[92].

3.2.4. Partial implementation of CIT

As mentioned above (see above under section 3.2.1), Swiss tax law refers to the legal treatment and therefore, based on whether it has legal personality or not, an entity is treated as a separated CIT-subject or in transparency. However, in the case of real estate investment funds with direct ownership (see here above section 3.2.3, lit. b), the entity is treated as a CIT-subject for its direct ownership in real estate and as a transparent entity for other incomes. The same can apply in the context of foreign partnerships with a limited tax liability in Switzerland, as depending on the residency of the partners, this entity will be treated as a CIT-subject or not (see here below, section 4.1.2).

3.2.5. Tax planning

Running a business through a transparent entity or through a corporation subject to CIT does lead to different tax treatments as (i) corporations are subject to tax at CIT rate and can deduct taxes from their taxable basis[93]. On the other hand, using a corporation taxed separately means suffering a double economical taxation on the profit and, possibly, a non-refundable 35% dividend withholding tax on the dividends. As discussed already above (see here above section

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84 On this topic, see in particular: René Matteotti, Der Durchgriff bei von Inländern beherrschten Auslandsgesellschaften im Gewinnsteuerrecht, Bern 2003.

85 Locher, note 24, Einführung zu Art. 49ff, n. 21ff; Reich (note 2), p.440; Oberson, note 26, § 9 n. 9.

86 Locher, note 24, Einführung zu Art. 49ff, n. 30; Reich (note 2), p. 440.

87 Reich (note 2), p. 441 et seq.. ; Locher, note 24, Einführung zu Art. 49ff, n. 26.

88 Oberson, note 26, § 9 n. 9 and the Supreme Court decisions referred to in notes 88 and 89. Under the terminology of Swiss tax law, the basis to apply transparency is the so-called "*evasion fiscal*" or "*Steuerumgehung*".

89 Decision of the Swiss Supreme Court dated January 30, 2006 commentated by Glauser, note 26, p. 486 et seq.

90 See, among others, Decision of the Swiss Supreme Court dated June 28, 2012 (2C_732/2010) with references to other decisions in the same vein.

91 Reich (note 2), p. 441 ; Decision of the Swiss Supreme Court dated June 28, 2012 (2C_732/2010), section 5.1.

92 Matteotti, note 84, p. 192; Locher, note 24, Einführung zu Art. 49ff, n. 21 et seq.; Glauser, note 26, p.495 et seq.; Reich (note 2), p. 441; Oberson, note 26, § 9 n. 9; Dahinden, note 26, p. 98.

93 Art. 59, para. 1, lit. a DFTL.

3.1, in particular references quoted in notes 29, 30 and 31), the topic of neutrality of taxation with respect to the choice of a legal structure has raise an intense academic discussion in the past.

4. Cross border situations

In connection with cross border situations, Switzerland knows specific rules that require attention. We will first describe the treatment for foreign entities with a connection to Switzerland (hereinafter section 4.1) and then mention the case of foreign entities without connections to Switzerland (hereinafter section 4.2).

4.1. Foreign entities in Switzerland

Art. 11 and 49, para. 3 DFTL represent specific provisions dealing with the case of foreign entities active in Switzerland. Art. 11 DFTL introduces an exception to the principle of transparency of partnerships[94]. It mentions that "foreign business societies and other foreign communities of persons without legal personality" [95] are taxed according to the rules applicable to legal entities. Although the FHL does not contain such a provision, almost all cantons have introduces a similar provision in their cantonal legislation[96]. As in any case the FHL provides in art. 20, para. 2 for an article that is very similar to art. 49, para. 3 DFTL, the cross border situations described here should also be applicable at cantonal level[97].

Besides art. 11 DFTL, art. 49, para 3 DFTL refers to "foreign legal persons as well as to foreign business societies and foreign communities of persons mentioned in art. 11 DFTL" [98], that are all treated as separate CIT-subjects. The purpose of this rule is to reach a simple solution avoiding dealing with the delicate question on whether a foreign business entity enjoys the legal personality or not; simultaneously, treating all foreign business entities active in Switzerland as corporations allow to avoid registering in Switzerland numerous partners for one single business activity[99].

Art. 49, para. 3 DFTL and art. 11 DFTL apply to foreign corporations and/or partnerships that are liable in Switzerland due to a limited liability, for instance due to their ownership in Swiss real estate or in a permanent establishment in this country. It is however not applicable to entities that would become unlimited tax payers due to an effective management carried out of Switzerland[100]. This situation will be discussed below under section 4.1.3.

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94 Peter Brülisauer/ Marcel R. Kriesi, Internationale Personenunternehmen im Einkommens- und Gewinnsteuerrecht der Schweiz (1. Teil), IFF Forum für Steuerrecht, Vol. 4, 2007, p. 272.

95 „*Sociétés commerciales étrangères et autres communautés étrangères de personnes sans personalité juridique*".

96 Brülisauer/Kriesi, note 94, p. 272. As mentioned by these authors, two cantonal tax legislations do not contain this rule: Basel Land and Aargau.

97 Peter Athanas/Stefan Widmer, in. Zweifel/Athans (editors), Kommentar zum Schweizerischen Steuerrecht I/1, Bundesgesetz über die Harmonisierung der direkten Steuern der Kantone und Gemeinden (StHG), 2nd edition, Basel 2002, ad art. 20 n. 8 et seq.; Brülisauer/Kriesi, note 94, p. 279.

98 „*Les personnes morales étrangères ainsi que les sociétés commerciales et les communautés étrangères de personnes imposables selon l'art. 11* […] ».

99 Reich (note 2), p. 234; Salvi, note 33, p. 195 ; Locher, note 28, ad art. 11 n. 2 et Locher, note 24, ad art. 49 n. 2 ; Brülisauer/Kriesi, note 94, p. 275.

100 Reymond, note 45, p. 346; Athanas/Giglio, note 70, ad art. 49 n. 15.

It is interesting to note that art. 49, para.3 DFTL has no equivalent in the withholding tax law[101]. Therefore, distributions performed by a foreign entity can only trigger the Swiss withholding tax if it is treated as an unlimited tax payer by way of effective management in Switzerland.

In Switzerland, the question of interpretation of the parent-subsidiary Directive is not relevant, as Switzerland is not in the EU. However, art. 15 of the Agreement concluded between Switzerland and the EU[102] overtakes the main principles of the parent-subsidiary Directive. This provision is however clearly only applicable to corporations with legal personality ("*sociétés de capitaux*"). Regarding Switzerland, this concerns the "*sociétés anonymes*", the "*sociétés à responsabilité limitée*" and the "*sociétés en commandite par actions*". Regarding EU companies, the Swiss Supreme Court[103] has confirmed recently that the companies covered by the parent-subsidiary Directive are also covered by the art. 15 of the Saving Agreement.

4.1.1. Foreign corporations with limited tax liability in Switzerland

Regarding foreign corporations, art. 11 and 49, para. 3 DFTL provide for a two steps approach[104]. First, it has to be decided whether the foreign entity enjoys the legal personality and, if yes, it is then treated as a corporation for CIT purposes in Switzerland, i.e. as a separate tax subject. In a second step, it has to be decided to which type of legal entity it is most similar in Switzerland. This is important in connection with the applicable tax rate and with some specificities linked to the taxable basis.

Regarding the first question, international private law is applicable and refers to the Incorporation theory mentioned before. There is therefore no room for a specific tax definition on whether a foreign entity has legal personality or not[105]. To our view, this is also applicable for foreign public bodies, that need to follow the same rule. Assuming they benefit from the legal personality in their jurisdiction, they must be treated as corporations under Swiss law by analogy to art. 49, para. 1, lit. b DFTL. In this context, it is important to note that the tax exemption provided for public bodies under Swiss law is not a general one, but refers to precise jurisdictions (Swiss Federal State, cantons and municipalities). It is hence not applicable to foreign public bodies with an activity in Switzerland.

4.1.2. Foreign business entities and communities of persons with limited tax liability in Switzerland

Art. 49, para. 3 DFTL refers to foreign business societies and foreign communities of persons mentioned in art. 11 DFTL. This means that such foreign entities are treated as Swiss CIT-subjects even if they don't enjoy legal personality abroad and although they would be treated in a transparent way in domestic relationships. The scope of this rule is therefore of primary importance.

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[101] Salvi, note 33, p. 195.

[102] *Accord du 26 octobre 2004 entre la Confédération Suisse et la Communauté européenne prévoyant des mesures équivalentes à celles prévues dans la directive 2003/48/CE du Conseil en matière de fiscalité des revenus de l'épargne sous forme de paiement d'intérêts*.

[103] Decision of the Swiss Supreme Court dated October 12, 2012 (2C_176/2012), in particular sections 5.4.2. et seq.

[104] Locher, note 24, ad art. 49, n. 23.

[105] Locher, note 24, ad art. 49 n. 24 et seq.

This does not apply to foreign individuals running alone a business in Switzerland[106]. Indeed, art. 49, para. 3 DFTL, as well as art. 11 DFTL, refers to partnerships and business "societies" ("*societas*"). This means that at least two persons have to act jointly to pursue a common goal. The need to avoid several registrations of partners for one single activity is also less important in the case of a one-person-business[107]. Controversial is also whether the foreign partnership needs to run a business to become a Swiss CIT-subject. For certain[108], this is not the case. Others[109] consider that the rule only apply to business entities. To our view, considering the wording of art. 11 and 49, para. 3 DFTL, we consider that a business activity is not required for foreign communities of persons in order to be treated as a CIT-subject in Switzerland.

A very much debated question among the scholars is the definition of "foreign partnership". It seems clear in the literature that this does not refer to the place of incorporation[110]. Some authors consider that the "foreign partnership" can be any entity with an activity abroad and a limited presence in Switzerland[111]. Most authors however[112] consider that the relevant criterion is the place of residency of the partners. Consequently, a foreign partnership is treated as a corporation and as a CIT-subject for the part of the business owned by foreign partners and as a transparent partnership for the part owned by Swiss resident partners. Therefore, a same business entity can be treated in a transparent way and, simultaneously as a separate CIT-subject, depending on the residency of the partners. Unlike the position defended by certain authors[113], we are of the opinion that this is also applicable if one partner is abroad and one partner is in Switzerland.

Based on art. 10 para. 2 DFTL, investment funds, including foreign investment funds, are treated in a transparent way. However real estate funds with direct ownership have a specific treatment as mentioned already above (see section 3.2.3, lit. b)). The question is whether this is also apply to foreign real estate funds and whether they are also treated as a separate CIT-subject ? This should not be a problem for foreign funds organized as corporations, as they should in any case be considered as CIT-subject in Switzerland[114]. It could however trigger discrimination in connection with contractual funds, if this type of structure would be treated in a transparent way when being a foreign resident. Scholars however consider that all type of real estate foreign funds with direct ownership fall directly under the scope of art. 49, para. 2 DFTL[115] and therefore are directly treated as corporations based on the real estate fund provision.

It is in addition accepted among the authors[116] that foreign trust cannot fall under the scope of art. 11 and 49 para. 3 DFTL. Indeed, the trust is not a "foreign community of persons" as the individuals concerned by the trust have no contractual relationships among others. The trust is therefore not taxed as a corporation under Swiss tax law[117].

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[106] Locher, note 28, ad art. 11, n 4; Brülisauer/Kriesi, note 94, p. 274.
[107] Brülisauer/Kriesi, note 94, p. 275.
[108] Locher, note 28, ad art. 11, n. 5
[109] Brülisauer/Kriesi, note 94, p. 275.
[110] Locher, note 28, ad art. 11, n. 8.
[111] Athanas/Giglio, note 70, ad art. 49 n. 17
[112] Reich, Steuerrecht 2012, p. 235; Locher, note 28, ad art. 11, n. 10, 11 and 13; Brülisauer/Kriesi, note 94, p. 277; Oberson, note 26, § 9 n. 4.
[113] Peter Brülisauer/ Marcel R. Kriesi, Internationale Personenunternehmen im Einkommens- und Gewinnsteuerrecht der Schweiz (2. Teil), IFF Forum für Steuerrecht, Vol. 1, 2008, p. 7 and 11. Locher, note 28, ad art. 11, n. 12 et seq. doesn't seem to share this view.
[114] Locher, note 24, ad art. 49, n. 18.
[115] Locher, note 28, ad art. 11, n. 6; Hess/Scherrer, note 48, p. 431; Heuberger, note 68, n. 373.
[116] Robert Danon, Switzerland's direct and international taxation of private express trusts, Zurich/Basel/Geneva 2004, p. 203; Locher, note 24, ad art. 49 n.31.
[117] This also the position of the authorities: see Circular letter of the Federal Tax Administration no 20 date March 27, 2008 ("*Imposition des Trust*s), in particular section 4.1.

The consequence of the application of art. 11 and 49 para. 3 DFTL is that a foreign partnership is treated as a corporation in Switzerland. This means that the partnership is, at least for the part owned by foreign partners, taxable in Switzerland as a separate CIT-subject[118]. The members of the partnership are however jointly and severely responsible for the tax debts of the entity (art. 55, para. 4 DFTL). Another view[119] is that partners remain the tax subjects in Switzerland and that art. 11 DFTL only creates a tax substitution, whereby the partnership overtakes all procedural rights and duties of the taxpayers. Even the authors[120] defending this position admit that the foreign partnership has to file a CIT tax return and therefore this view does not have any important practical impact.

As far as the foreign partnership is treated as a CIT tax subject in Switzerland, all provisions applicable to corporations are applicable to it, including the fact that the CIT is assessed based on its accounts, that the taxes are deductible from the taxable basis, etc. [121]. An exception relates to provisions that are intimately linked to the nature of a corporation with legal personality, in particular the specific tax regimes for dividends (participation exemptions and specific holding regimes) [122]. Regarding the tax rate, the foreign partnership is treated as a regular corporation or as an "other legal person" based on its effective activity and on its nature[123].

4.1.3. Foreign entities with unlimited tax liability

Based on art. 50 DFTL, a company becomes an unlimited tax payer (full resident) if it has its statutory seat in Switzerland or if it is effectively managed out of Switzerland. A foreign corporation can therefore become a Swiss CIT-payer if it is effectively managed from this country. In this case, it becomes a CIT-subject, not based on art. 49 para. 3 and art. 11 DFTL, but due to the general rule applicable to unlimited residency[124].

However, the tax law does not explicitly deal with the question of the nature of this foreign entity with unlimited tax liability. To our view, art. 49 para. 3 DFLT should apply by analogy, in order to allow treating the foreign entity like the Swiss entity to which it is the closest. By doing so, all foreign corporations will be treated in Switzerland in the same way, regardless whether they are taxed in this country because of a limited or an unlimited liability[125].

It is important to note that a foreign corporation becoming taxable in Switzerland because of effective management will very likely also be subject to the Swiss withholding tax on distribution of profits. Indeed, art. 9, para. 1 WHTL provides for a definition of a Swiss resident corporation that is relying on the concept of seat and of effective management. In practice, the authorities rely indeed on the sole concept of effective management, like the CIT

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[118] Athanas/Giglio, note 70, ad art. 49 n. 17.
[119] Brülisauer/Kriesi, note 112, p. 5.
[120] Brülisauer/Kriesi, note 112, p. 6.
[121] Locher, note 28, ad art. 11, n. 17; Bernhard J. Greminger/ Bettina Bertschi, in: Zweifel/Athans (editors), Kommentar zum Schweizerischen Steuerrecht I/2a, Bundesgesetz über die direkte Bundessteuer, Art. 1-82, 2nd edition, Basel 2008, ad art. 11, n. 3; Brülisauer/Kriesi, note 112, p. 5 et seq.
[122] Locher, note 28, ad art. 11, n. 18; Greminger/Bertschi, note 120, ad art. 11, n. 4; Brülisauer/Kriesi, note 112, p. 6.
[123] Salvi, note 33, p. 195.
[124] Reymond, note 45, p. 346..
[125] In this sense also: Athanas/Giglio, note 70, ad art. 49 n. 9.

administration[126]. Assuming that a foreign entity is deemed to be domiciled in Switzerland, the question will then be whether a distribution falls under the definition of dividend according to art. 4, lit. b WHTL[127], which will be the case if the foreign entities of corporation that is similar to one of the Swiss legal form that distributes dividends subject to withholding tax[128].

4.2. Foreign entities without business in Switzerland

Concerning foreign entities that do not carry out a business in Switzerland, the situation corresponds to domestic relationships. Art. 49 para. 3 DFTL states that foreign corporations are treated as the Swiss corporations to which they are the most similar. This provision confirms that foreign corporations are to be treated like Swiss corporations, and therefore represent a separate CIT-subject[129]. As already mentioned, Switzerland does not know CFC legislation[130] and therefore foreign corporation are usually regarded as not transparent. Consequently, dividends received by Swiss shareholders are treated in the same way then Swiss dividends and can benefit from the specific tax treatment applicable to this type of income, provided however that the foreign corporation corresponds to a legal form that would allow such treatment if the distributing entity was in Switzerland. This means in particular that the capital of the distributing company needs to be divided in shares[131]. In this regard, the Federal Tax Administration explicitly refers to art. 49 III DFTL[132].

In the same logic, foreign partnerships without activity in Switzerland are treated in a transparent way; the Swiss partners of such entities have to directly declare the foreign income in their tax return[133]. This can trigger some difficulties in connection with specific legal forms, when it is uncertain whether they represent a partnership or a corporation. In this regard, based on art. 49 para. 3 DFTL, the foreign entity has to be analysed, to decide whether it is more similar to a Swiss corporation or to a Swiss partnership. The Swiss tax authorities, for instance, went through this exercise for US limited liability corporations (LLC) and came to the conclusion that these entities needed to be treated as a "*société à responsabilité limitée*" , i.e. in a non-transparent way[134].

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[126] Athanas/Giglio, note 70, ad art. 50 n. 22; Also agreeing on this point of view, in particular in view of reaching a coherent approach in the tax system: Thomas Jaussi/Fabian Duss, in : Zweifel/Beusch/Bauer-Balmelli (editors), Kommentar zum schweizerischen Steuerrecht, Bundesgesetz über die Verrechnungssteuer, 2nd edition, Zürich 2012, ad art. 9 n. 34b, 35 and 36.

[127] Alberto Lissi, Steuerfolgen von Gewinnausschüttungen schweizerischer Kapitalgesellschaften im internationalen Konzernverhältnis, Zürich 2007, p. 29; Jaussi/Duss, note 125, ad art. 9 n. 32a.

[128] Lissi, note 126, p. 29.

[129] Matteotti, note 84, p. 112 ; Glauser, note 26, p. 488.

[130] Reich (note 2), p. 440; see also: Dahinden, note 26, p. 321 et seq. and Matteotti, note 84, p. 51 et seq.

[131] Dahinden, note 26, p. 176.

[132] Circular letter of the Federal Tax Administration no 27, December 17, 2009 (« *Réduction d'impôt sur les rendements de participations à des sociétés de capitaux et sociétés cooperatives* »).

[133] Brülisauer/Kriesi, note 94, p.276s.

[134] The Association of the Swiss Tax Authorties (*Conférence suisse des impôts*) has issued a document on this topic dated September 6th, 2011 ("*Praxishinweise zur steuerlichen Behandlung der US-amerikanischen Limited Liability Company bei den direkten Steuern*").