

New Chinese-Swiss Double Tax Treaty

Most important changes

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Kelvin Lee started his China and Hong Kong tax business consulting career with PricewaterhouseCoopers Hong Kong. Before moving to Beijing, he previously served in the China firm's offices in Guangzhou, Shanghai and Hong Kong of the PricewaterhouseCoopers network.

Kelvin is experienced in advising on cross-border tax planning to mitigate taxes for over 20 years. Kelvin also has broad experience in other Chinese taxes and business advisory. He currently serves a number of multinational and Chinese domestic enterprises in a wide variety of industries, including offshore oil project in Tianjin, clean energy projects, real estate, manufacturing and high-tech industries. On daily basis, he also works closely with Chinese authorities in tax, finance, foreign exchange and commerce at both national and local levels.

Kelvin holds a Master's Degree from Business School of Hong Kong University of Science and Technology and a Bachelor's Degree in Accountancy from University of Hong Kong Polytechnics. In addition, Kelvin is a fellow member of UK Chartered Association of Certified Accountants and Hong Kong Institute of Certified Public Accountants.

Professional Qualifications

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Background

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Background

Transition of double tax treaty between China and Switzerland

Old version Signed
in 1990

- One of the first comprehensive double tax treaties of China with a European country

Never revised
since 1990

- not reflecting the fast development of economic ties between China and Switzerland since 1990
- not fully in line with current political developments regarding international taxation and exchange of information

New version
started negotiation
from 2010

- Aiming at amending the existing China and Switzerland double tax treaty

New version
signed on 25
September 2013

- New version effective from 1 January 2015

New double tax treaty and implications

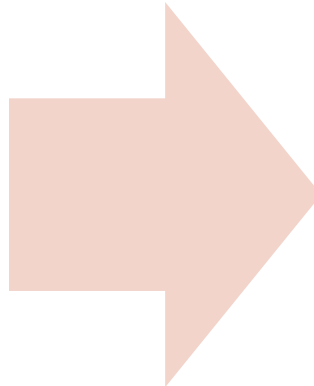
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New double tax treaty and implications

Art. 10: Dividends

Old Version:

Withholding tax (“WHT”) rate of 10% applies to all dividend payments if the recipient is the beneficial owner of the dividends.



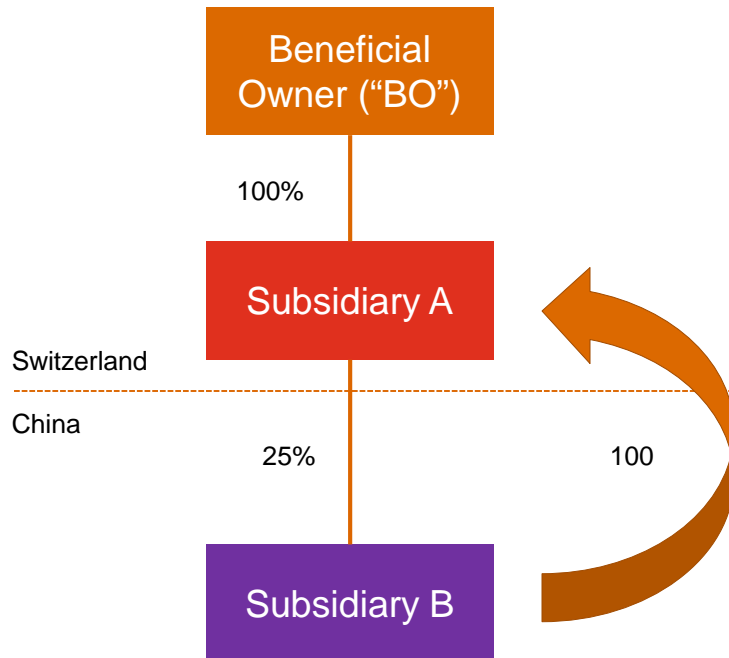
New Version:

- a) WHT rate of **5%** applies if the beneficial owner is a company (other than a partnership) which **holds directly at least 25% of the capital** of the company paying the dividends;
- b) WHT rate of 10% in all other cases.

New double tax treaty and implications (Cont'd)

Art. 10: Dividends (Cont'd)

Example



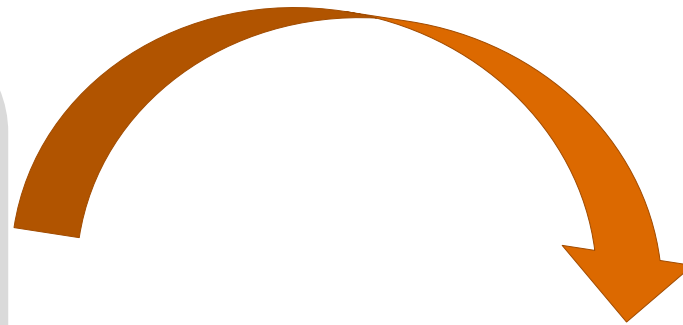
	Old Version	New Version
Dividend Amount	100	100
WHT Amount	10	5
Tax Saving Amount	-	5
Tax Implication in Switzerland	?	?

New double tax treaty and implications (Cont'd)

Art. 12: Royalties

Old Version

- In general a WHT rate of 10% applies to royalty payments if the recipient is the beneficial owner of the royalties;
- In case of **leasing fees**, only 60% of the gross amount of the leasing fees shall be subject to WHT, i.e. leasing fees are subject to WHT at an effective rate of **6%**.



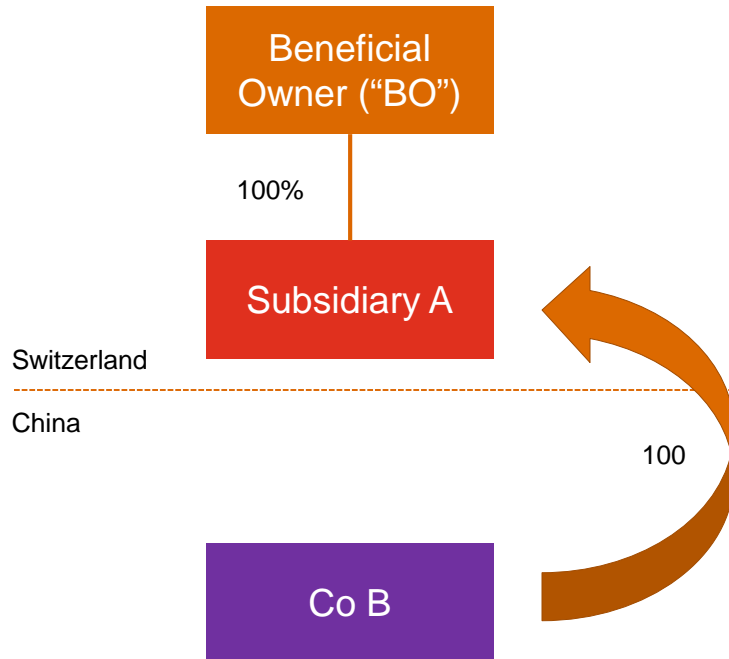
New Version:

- WHT rate of **9%** applies to all royalty payments if the beneficial owner of the royalties is a resident of the other Contracting State;
- No special treatment for leasing fees

New double tax treaty and implications (Cont'd)

Art. 12: Royalties (Cont'd)

Example



	Old Version	New Version
Royalties Amount	100	100
WHT Amount	10	5
Tax Saving Amount	-	5
Tax Implication in Switzerland	?	?

New double tax treaty and implications (Cont'd)

Only “Beneficial Owner” can claim treaty benefits in respect of dividends, interest, royalties and capital gains under double tax treaty

Seven unfavourable factors in assessing the “BO” status

1. Upward payment of the income within 12 months.

2. No other business activities.

3. The assets, scale of operations, and employees are not commensurate with the amount of the income.

4. No controlling rights on the income or the assets, and bears no or very little risk.

5. Low tax burden on the income.

6. Another similar loan contract with a third party.

7. Another licensing or transfer contract with a third party.

New double tax treaty and implications (Cont'd)

Seven unfavourable factors in assessing the “BO” status

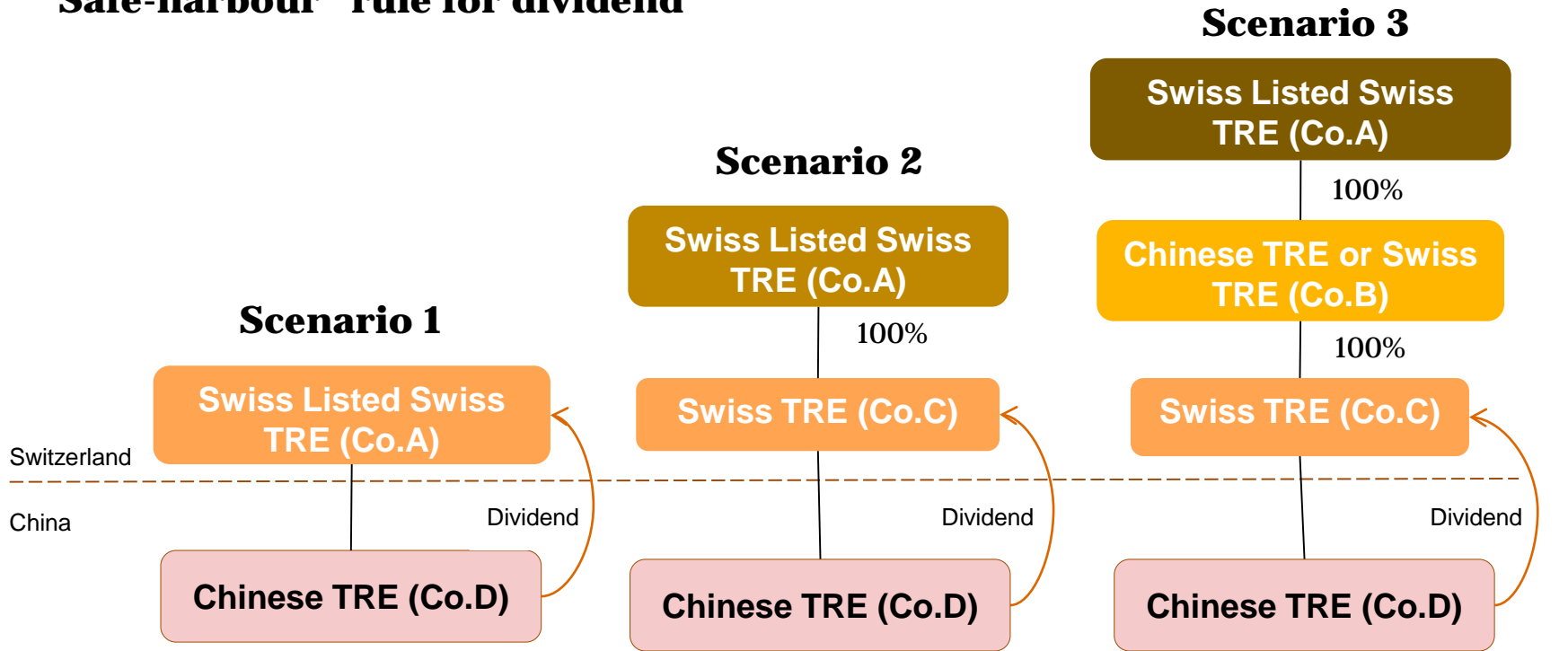
All the relevant factors should be analyzed comprehensively when assessing the BO status.

The BO status should not be denied simply because one of the seven unfavourable factors exists.

The BO status should not be allowed merely because there is no motivation of avoiding/reducing tax.

New double tax treaty and implications (Cont'd)

“Safe-harbour” rule for dividend



Under the Safe-harbour rule, BO status can be directly granted to Swiss TRE who is the immediate recipient of the China sourced dividends

New double tax treaty and implications (Cont'd)

Art. 13: Capital gains

Old Version:

Capital gains from the sale of property not specifically mentioned in the preceding paragraphs are taxable only in the Contracting State of which the seller is a resident

(residence principle)

Additional article:

Capital gains from the sale of shares in a company which is a resident of the other Contracting State may be taxed in that other Contracting State if the recipient of the gains, at any time during the twelve-month period preceding such alienation, had a participation, directly or indirectly, of at least 25 per cent in the capital of that company

(source principle)

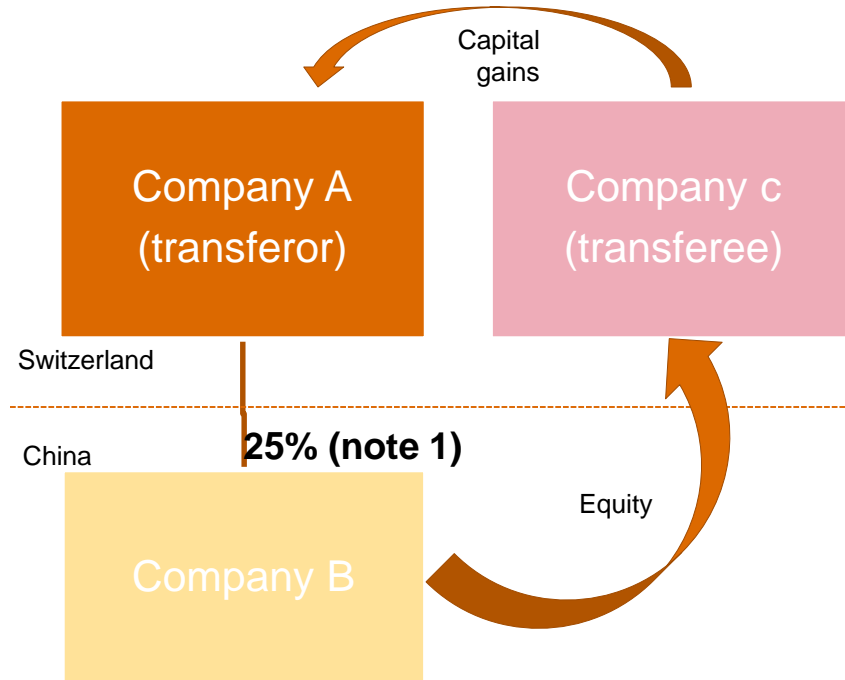
Same Version:

Gains from the alienation of any property, other than that referred to in the preceding paragraphs, shall be taxable only in the Contracting State of which the alienator is a resident.

New double tax treaty and implications (Cont'd)

Art. 13: Capital gains (cont'd)

Example 1 – Direct Transfer



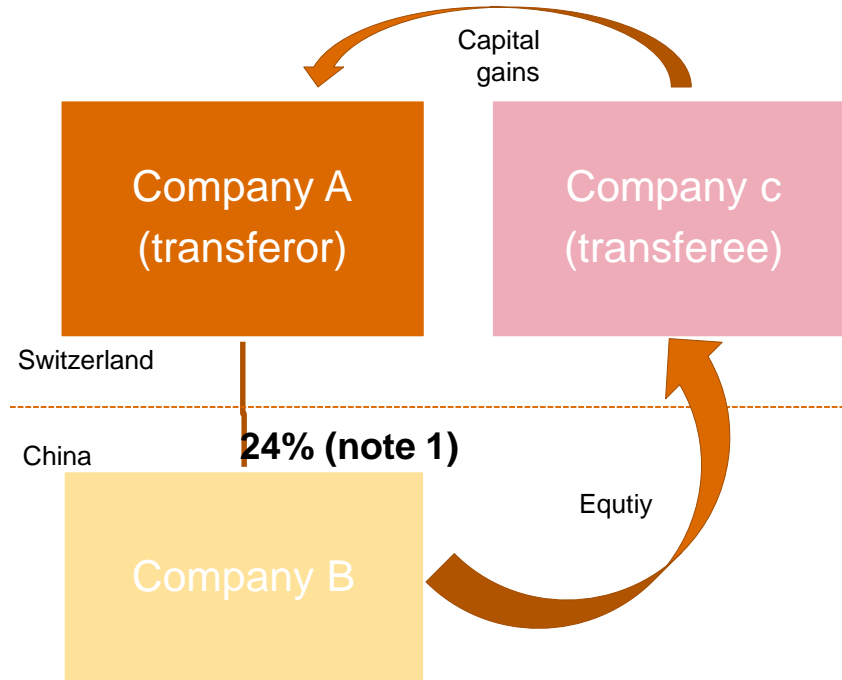
	Old Version	New Version
Capital gains taxable in Switzerland?	Y	Y
Capital gains taxable in China?	N	Y
Tax credit apply in Switzerland?	?	?

1. at any time during the twelve-month period preceding the transaction

New double tax treaty and implications (Cont'd)

Art. 13: Capital gains (cont'd)

Example 2 – Direct Transfer



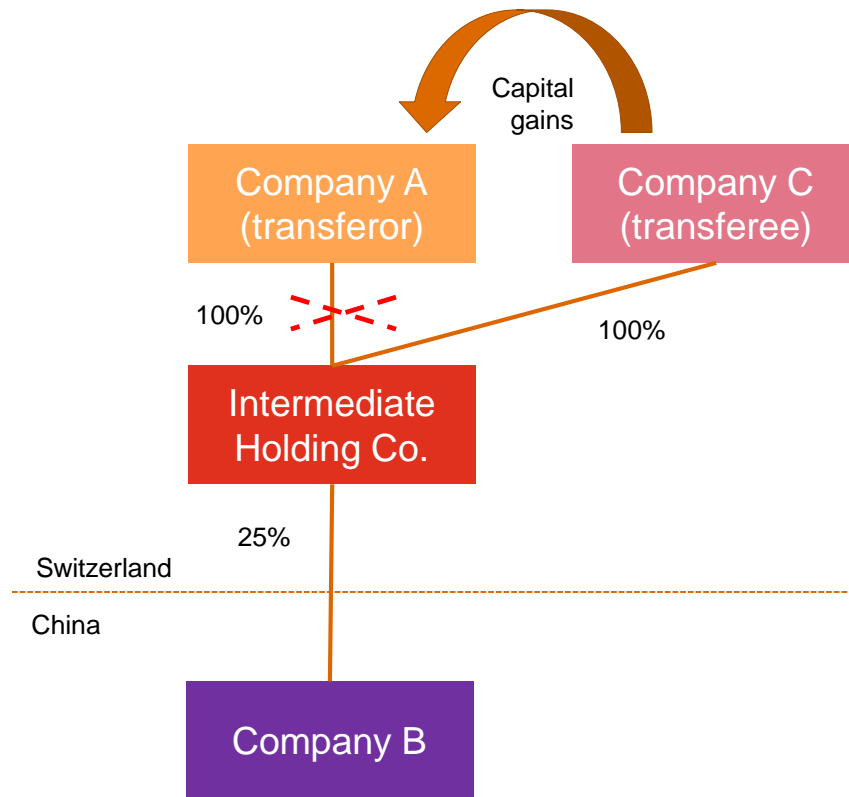
	Old Version	New Version
Capital gains taxable in Switzerland?	Y	Y
Capital gains taxable in China?	N	N
Tax credit apply in Switzerland?	?	?

1. at any time during the twelve-month period preceding the transaction

New double tax treaty and implications (Cont'd)

Art. 13: Capital gains (cont'd)

Example 3 – Indirect Transfer – Apply Chinese Local Tax Rules



CIT obligation is decided by whether this transaction has reasonable commercial purpose or not

New double tax treaty and implications (Cont'd)

Art. 13: Capital gains (cont'd)

Seven general factors for assessing the reasonable commercial purpose

1. China content of the equity value of the overseas company being transferred

2. China content of the asset value and income of the overseas company being transferred

3. Functions performed and risks undertaken

6. Whether the indirect investment and transfer of the Taxable Properties in China can be substituted by a direct investment and direct transfer equity transfer

4. The existence duration of the shareholders, business model of the structure

5. Overseas income tax payment for the indirect equity transfer

7. The applicability of any treaty protection

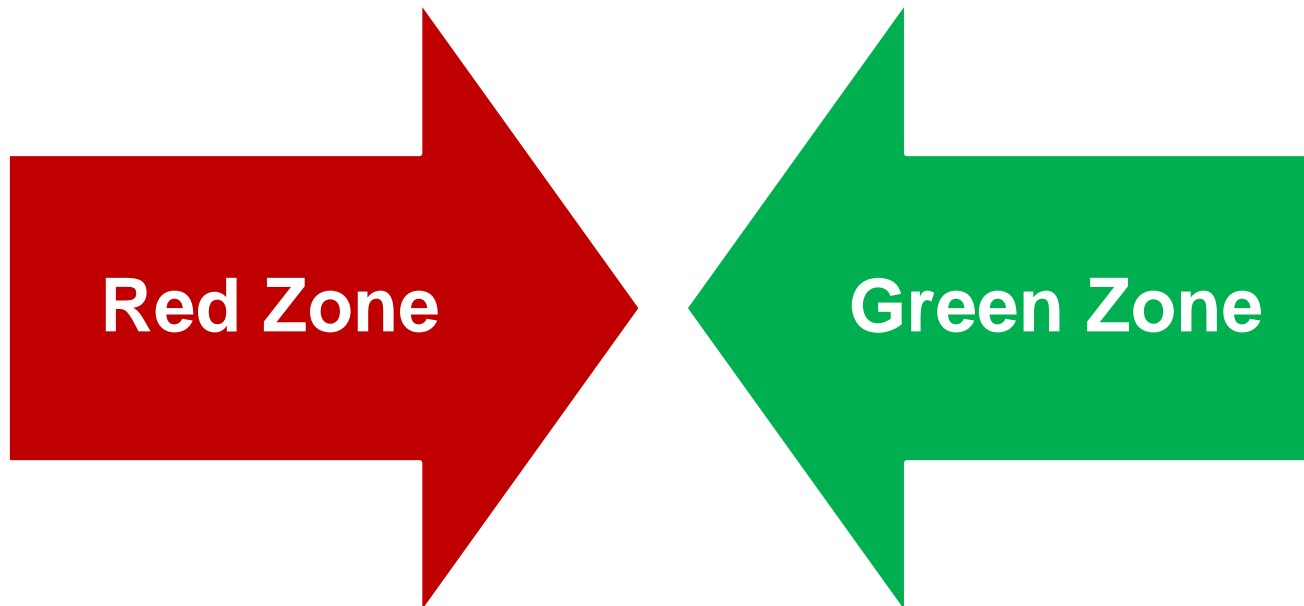
8. Others



Holistic approach

New double tax treaty and implications (Cont'd)

Art. 13: Capital gains (cont'd)



New double tax treaty and implications (Cont'd)

Art. 27: Exchange of information

Old Version (Art. 26):

- The competent authorities shall only exchange such information as is necessary for carrying out the provisions of the double tax treaty.

New Version:

- The new provisions regarding exchange of information are in line with current international standards.

New double tax treaty and implications (Cont'd)

Art. 8 / Protocol: Shipping and air transport

New Version:

- Art. 8 itself remains unchanged;
- The protocol stipulates that **no Value Added Tax (“VAT”) and no Business Tax (“BT”)** shall be levied on such international shipping and air transport services (even though VAT and BT are in general not covered by DTTs):

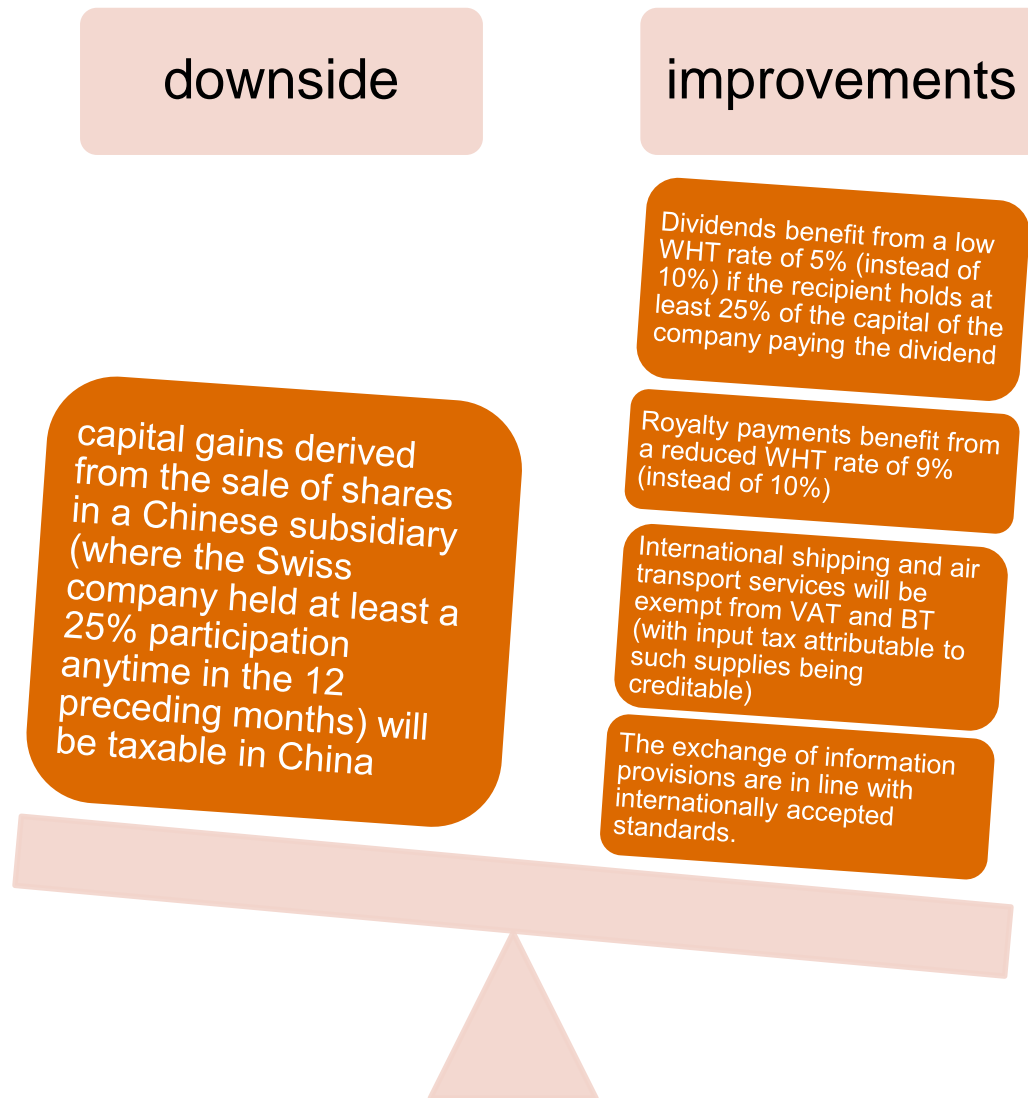
a) for residents of Switzerland carrying on the operation of ships or aircraft in international traffic, supplies of international transportation shall be exempt from BT or any other similar tax imposed on the gross receipts in China, or shall be zero-rated under VAT in China and the input tax attributable to such supplies shall be creditable to the same extent as it is to business enterprises resident in China; and

b) for residents of China carrying on the operation of ships or aircraft in international traffic, supplies of international transportation shall be zero-rated under VAT in Switzerland and the input tax attributable to such supplies shall be creditable to the same extent as it is to business enterprises resident in Switzerland.

Summary

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Summary



Thank you !

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