

NOBLE INVESTMENTS LIMITED (BERMUDA)

SWISS TAX ISSUES

Background

- Noble Investments Ltd (Bermuda) is engaged in the business of selling hedge funds to investors.
- Noble Investments SA (Switzerland) provides advisory services to NI, and acts as a co-swap bank. NI concludes contracts and also structures all of the bets.
- Noble Investments structures hedge funds by picking advisors for the portfolio and then assists with the marketing of the funds. Sales personnel employed by NI, based in Zurich perform the marketing, structuring, operational accounting and intermediaries' liaison including the calculation of commissions.
- This structure has been disclosed to the Swiss tax authorities and they have ruled that NI is not subject to Swiss federal or cantonal taxation. NI is taxed on the higher of cost+5% or cost-20% of the profit generated by NI.
- In the disclosure to the Swiss tax authorities we have not advised that personnel working in Switzerland conclude NI's contracts for fees for product structure and portfolio performance, and NI's intermediary agreements.

Issues

- There is concern that if the Swiss tax authorities learn that Swiss personnel are concluding NI contracts that NI will be deemed to have a permanent establishment in Switzerland or that NI will even be treated as a Swiss resident company (place of effective management and central office Switzerland). This could have the following consequences:
 - NI would be exposed to Swiss tax on a portion or all of its profits.
 - Any (open or discounted) dividend distributions made by NI to its shareholders would be deemed to have been made from a Swiss company and be subject to 25% withholding tax. This withholding tax would only be fully or partially refunded by the Swiss tax authorities to shareholders who are (i) Swiss resident persons (full refund) or (ii) who are entitled to benefit from a tax treaty with Switzerland (full or partial refund depending upon the applicable treaty).
 - The service charges from NI SA would be subject to VAT because they are being made by a Swiss permanent establishment. In this case, it would have to be investigated whether (i) NI, as a Bermuda company would be able to register (or would even have to register) for Swiss VAT and (ii) what the VAT implications of such a registration would be.