

Examination

Required Knowledge of Swiss law

(Section 4 par. 2 let. d AOA; section 6 and 34 AOO)

1.	<i>Oversight of Auditors</i>	2
2.	<i>Swiss Contract Law</i>	3
3.	<i>Swiss VAT</i>	5
4.	<i>Audit Reports & Other Obligatory Examinations</i>	7
5.	<i>Ordinary Audit & Limited Statutory Examination</i>	12
6.	<i>Swiss Company Law</i>	13
7.	<i>Swiss Social Security System</i>	16
8.	<i>Swiss and International Corporate Taxation</i>	18

Please note that:

- You have 150 minutes to solve this exam. Of course, you are free to plan the allocated time.
 - **You must answer directly on the answers form (blue document).**
 - There is only **one** correct answer per question.
 - Use only a black or blue pen.
 - At the end of the exam, all the sheets must be returned (including the following question sheets).
 - In order to ensure equal treatment, no explanation will be given concerning the questions before or during the examination.
-

1. Oversight of Auditors

Question 1:

Which of the following statements is **wrong**?

- A) Audit firms are licensed for the provision of audit services for public companies, if they fulfill the conditions for being licensed as an audit expert, ensure that they comply with statutory requirements and are sufficiently insured against liability risks
- B) Only audit firms under state oversight are within the scope of FAOA inspections.
- C) A public company may not employ a person who during the preceding year led the audit services for this company or held a decision making function in the respective audit firm.
- D) A voluntary submission as audit firm under state oversight is possible.

Question 2:

Which of the following statements in connection with licensing / licensing duty is **wrong**?

- A) For individuals to obtain a license as audit expert and auditor the applicant has to be of "good repute".
- B) License for audit firms under state oversight is unlimited valid.
- C) The management structure ensures that the individual engagements are adequately monitored.
- D) Firms where only 1 person has a license have to be connected to a system of peer review.

2. Swiss Contract Law

Question 3:

Optimize Ltd. was fined CHF 200,000 by the tax authorities. Optimize Ltd. considers that it was ill-advised by its tax advisor. Which of the following statements is **true**?

- A) Optimize Ltd. can sue its tax advisor for breach of contract up to the amount of the tax fine.
- B) Optimize Ltd. can sue its tax advisor for breach of contract and obtain from it the reimbursement of half of the tax fine.
- C) Optimize Ltd. can terminate the contract with its tax advisor but only with a 6 month notice period.
- D) Optimize Ltd. is not entitled to obtain the reimbursement of the tax fine from its tax advisor.

Question 4:

Trustaudit Ltd. is the statutory auditor of Grumpy Ltd. No representative of Trustaudit Ltd. was present at the general meeting of the shareholders of Grumpy Ltd. contrary to what was discussed and agreed. Which of the following statements is **true**?

- A) Grumpy Ltd. can sue Grumpy Ltd. for breach of contract if it effectively incurred damages by reason of the absence of Trustaudit Ltd.
- B) Grumpy Ltd. must first summon Trustaudit Ltd. to fulfill its obligations.
- C) In the absence of a report certified by a bailiff that no representative of Trustaudit Ltd. was present at the general meeting of the shareholders, Grumpy Ltd. cannot sue Trustaudit Ltd.
- D) Since there was no written contract between the parties, Trustaudit Ltd. was under no contractual obligations to send a representative at the general meeting of the shareholders and cannot therefore be sued by Grumpy Ltd.

Question 5:

Sitravon Ltd. and Trustaudit Ltd. have entered into a contract whereby Trustaudit Ltd. agrees to keep the books for Sitravon Ltd. After how many years can Trustaudit Ltd's no longer sue for payment of its fees due for its services (select the correct answer)?

- A) 5 years
- B) 1 year
- C) 10 years
- D) 30 years

Question 6:

Which of the following statements is true for an agency contract to be binding (select the correct answer)?

- A) The parties must exchange their concordant will to be bound and specify the essential terms of the contract.
- B) The contract must comply with strict form requirements.
- C) The parties cannot deviate from the provisions of the Code of Obligations governing agency agreements (art. 394 et seq. CO).
- D) The contract is binding even if it will be objectively impossible for anyone to fulfill the obligations provided therein.

3. Swiss VAT

Question 7:

M. Renard is a young lawyer who started his independent business activity on January 1st, 2014. He required his VAT registration at that date. Since the beginning of his business activity, M. Renard's turnover consists in revenues from the following supplies:

- advices' services to Swiss clients;
- advices' services to foreign clients; as well as
- arbitration supplies.

Within framework of his VAT situation, M. Renard would like to know his VAT liabilities regarding the payment of the Swiss VAT. Which of the following statements is **correct**?

- A) All supplies rendered by M. Renard are subject to Swiss VAT and hence, he must pay the tax at 8% on his whole turnover.
- B) The VAT at 8% is only due on advices' services rendered to Swiss clients.
- C) The VAT at 8% is due on the turnover related to all advices services rendered by M. Renard, but not on arbitration supplies.
- D) M. Renard does not render any taxable supply on Swiss territory and hence, he must not pay any Swiss VAT.

Question 8:

Bonnes affaires Sàrl is a limited liability company incorporated in Lausanne on January 1st, 2012. The company started its business activity at that date. Bonnes affaires Sàrl is active within the sale of mobile phone accessories at a lower price. Goods are sold by Bonnes affaires Sàrl in its stores located on Swiss territory. Since its creation, Bonnes affaires Sàrl revenues amounted to:

- CHF 60'000 in 2012;
- CHF 160'000 in 2013; and
- CHF 120'000 during the first calendar semester 2014.

Bonnes affaires Sàrl has never investigated its VAT registration liabilities. Today, Bonnes affaires Sàrl is asking you if it has to register for VAT purposes and, if this is the case, from which date onwards. Which of the following statements is **correct**?

- A) Bonnes affaires Sàrl will have to register on January 1st, 2015, so far its taxable turnover on Swiss territory will have exceeded CHF 100'000 during two years and will no more be exempt from the VAT registration liability.
- B) Bonnes affaires Sàrl does not fulfil the conditions for a compulsory VAT registration and is exempt from the VAT registration liability.
- C) Bonnes affaires Sàrl fulfilled the conditions for a compulsory VAT registration as of January 1st, 2014, since the 2013 taxable turnover on Swiss territory exceeded CHF 100'000 and is hence no more exempt from the VAT registration liability.
- D) Bonnes affaires Sàrl had to register for Swiss VAT purposes as of the beginning of its business activity as it was never exempt from the VAT registration liability.

Question 9:

The company Constructions SA is active within framework of real estate. The company is registered for Swiss VAT purposes as of January 1st, 2010. Constructions SA is currently building a real estate in Berne. This building will receive stores located on the ground and first floor as well as family flats located on the second and third floors. A lease agreement will be signed between each lessee – private customer and store – and Constructions SA (as owner). As the VAT amount related to the building constructions costs amounts to CHF 3 million, Constructions SA's director is asking you whether it would be possible to recover whole or part of this VAT amount as input tax. Which of the following statements is correct?

- A) The rental of real estate is exempt from VAT and the option for the voluntary taxation is not possible. Hence, Constructions SA cannot recover any VAT amount related to the construction costs as input tax.
- B) Constructions SA can opt for the voluntary taxation of all rental income and recover the whole input tax related to the building construction costs.
- C) Constructions SA can only opt for the rental income related to the family flats and recover the VAT on the related construction costs.
- D) Constructions SA can only opt for the rental income linked to the stores. Then it will be entitled to recover the VAT on constructions costs directly linked to this part of the building as well as part of the costs dedicated to both activities (rental with and without option).

4. Audit Reports & Other Obligatory Examinations

Question 10:

The balance sheet as of December 31, 2013 of Aargau AG is as follows::

	CHF
Cash	5,200,000
Other receivables	600,000
Own shares	<u>200,000</u>
	6,000,000
Liabilities	2,800,000
Equity	
Share capital	5,300,000
General reserve	1,000,000
Reserve for own shares	200,000
Special reserve	200,000
Accumulated loss	<u>(3,500,000)</u>
	3,200,000

You complete the 2013 audit in April 2014 and the AGM is to be held on May 13, 2014. In the first three months of 2014, the Company has generated a profit of CHF 4 million.

Which one of the following statements is correct?

- A) As Aargau AG has sufficient cash to pay its liabilities, there is no issue to consider as auditor.
- B) Art. 725 para. 1 CO applies and this will be included in the 2013 audit report.
- C) As Aargau AG has retained earnings at March 2014, no mention of art. 725 para. 1 CO is needed in the 2013 audit report.
- D) Aargau AG can avoid all reference to art. 725 para. 1 CO by using part of its cash to increase the share capital.

Question 11:

The income statement of Brig AG is shown below. When performing the 2013 audit, management informed you that they have reversed a hidden reserve on inventory for an amount of KCHF 500. There is no other movement in hidden reserves. The final audited figures are shown below:

<i>Figures in KCHF</i>	<u>2013</u>	<u>2012</u>
Turnover	5,000	6,000
Cost of goods sold	<u>2,000</u>	<u>3,000</u>
Gross margin	3,000	3,000
Salaries	1,000	1,000
General and administrative expenses	1,200	1,000
Other expenses	<u>400</u>	<u>400</u>
Net income	<u>400</u>	<u>600</u>

On basis of the information given above, which of the following statements is **correct**?

- A) As statutory auditor, you need to verify whether the net dissolution of hidden reserves is disclosed in the notes to financial statements.
- B) As statutory auditor, you will not qualify your opinion if the net dissolution of hidden reserves is not disclosed in the notes to financial statements as the amount is not material.
- C) As statutory auditor, you will always include an emphasis of matter paragraph in your auditor's report with respect to the net dissolution of hidden reserves.
- D) As statutory auditor, you will request a restatement of prior year financial statements as, based on the release of the hidden reserves, inventory was wrongly stated.

Question 12:

Lausanne AG is a privately-owned company, which produces generic pharmaceuticals for export. With over 1300 employees, sales and equity have exceeded CHF 300 million and CHF 40 million respectively every year since 2005.

With respect to the Swiss statutory audit report, which of the following statements are **correct**?

- 1) The audit report must be signed by two persons.
- 2) The professional qualifications of the auditor in charge signing the audit report must be disclosed.
- 3) The auditor must confirm that the accounting records and financial statements comply with Swiss law and the articles of incorporation.
- 4) The auditor must confirm as to whether an internal control system exists.

- A) 2), 3) and 4)
- B) 1), 2) and 3)
- C) 2) and 4)
- D) 1), 3) and 4)

Question 13:

You meet the CFO of Locarno SA, a small but fast growing company. Although the company qualifies for a limited statutory examination, the CFO explains that the shareholders want an ordinary audit for the annual shareholders meeting, as the company is seeking bank financing.

He considers that the internal control system (ICS) of his company is not perfect and would like to understand what the auditor will include in the audit report.

You provide the following examples:

- 1) The ICS is documented in writing and is applied. However, it is not appropriate considering the size of the company, its complexity and its risk profile. Therefore, the existence of the ICS will not be confirmed in the audit report.
- 2) If the ICS is not documented in writing, but its existence is confirmed in the letter of management representation, the existence of the ICS is confirmed with a qualification.
- 3) In case of absence of written documentation of the ICS in relation to a significant business cycle of the company, the existence of the ICS is confirmed with a qualification.
- 4) The ICS is documented in writing. Our audit work shows however that the system has not been applied on a day to day basis for all significant business cycles. In such a situation, the existence of the ICS is not confirmed.

Which of the following above statements above are correct?

- A) 1) and 2)
- B) 1) and 3)
- C) 1), 2), and 3)
- D) 1), 3) and 4)

Question 14:

Which of the following statements is **incorrect** re the incorporation of a share corporation?

- A) Even if the founders' meeting at an incorporation by contribution in kind has waived the audit requirement („opting-out“), the licensed auditor has to verify the founders' report and confirm in writing that is complete and accurate.
- B) On the examination of the incorporation, the licensed auditor has to examine whether the cash contribution has been deposited at the exclusive disposal of the company at an institution subject to the Federal Law of November 8, 1934, relating to Banks and Saving Banks in accordance with art. 633 para 1 of the Swiss Code of Obligations (“CO”).
- C) In the course of an incorporation by take-over of assets, the company in process to be incorporated undertakes to take-over assets from third parties after the incorporation. If these assets will be acquired from the shareholders or close associates of the shareholders, an examination of the founders' report is required.
- D) For the examination of the founders' report, the qualification of a licensed auditor according to art. 727c CO is required.

Question 15:

Which of the following statements is **correct** re the decrease of the nominal capital of a share corporation?

- A) The resolution of the shareholders' meeting re the decrease of the share capital with simultaneously replacing the decrease with new, fully paid-up capital, may only be taken if the auditor has ascertained by means of a special audit report that the claims of the company's creditors are fully covered despite the reduction in the share capital.
- B) If the capital decrease requires a special audit report, the licensed audit expert must be present at the general meeting which adopts the resolution.
- C) If the shareholders' meeting has waived the audit requirement („opting-out“), the shareholders' meeting may even waive the requirement to issue a special audit report.
- D) The decrease of the nominal capital of a share corporation is only allowed if the auditor ascertains by means of a special audit report that no subsequent capital increase will be carried out within a period of five years.

Question 16:

Which of the following statements is **incorrect** re the liquidation of a share corporation?

- A) Where the liquidation lasts for a longer period than 12 months, the liquidators must draw up interim balance sheets every year.
- B) A distribution of the company's assets may take place after a waiting period of 3 months only if a licensed audit expert confirms that the debts have been redeemed and that in the circumstances, it may be safely assumed that no third party interests will be harmed.
- C) If the shareholders' meeting has not waived the audit requirement („opting-out“), the licensed audit expert is obliged to keep the business records of the liquidated company for a period of ten years at a safe and accessible storage.
- D) Where the liquidators ascertain that the company is overindebted (in accordance with art. 725 para 2 CO), they must immediately notify the court which declares the commencement of the insolvency proceedings.

Question 17:

Which of the following statements is **incorrect** re the Swiss Merger Act („MA“)?

- A) Apart from the merger, the Swiss Merger Act („MA“) regulates the spin-off (or demerger), the conversion and the transfer of assets and liabilities. The transfer of assets and liabilities according to the MA does not require any examination by the company's auditors.
- B) An overindebted share corporation is only allowed to merge with another corporation if the latter has free distributable reserves in the amount of the overindebtedness or creditors of the merging entities subordinate their claims in the respective amount.
- C) The simplified merger in accordance with art. 23 et seq. MA (upstream merger / sister merger) does not require an auditors' examination according to art. 15 MA by the licensed audit expert.
- D) The auditors' examination according the art. 15 MA in the course of a merger obliges the licensed audit expert to carry out a valuation in accordance with an accepted valuation method.

5. Ordinary Audit & Limited Statutory Examination

Question 18:

When determining the type of audit to perform which statement is correct?

- A) An entity, which has according to the law to prepare consolidated financial statements is always subject to an ordinary audit.
- B) An entity which does not exceed two thresholds as defined in Art. 727 Code of Obligations can always renounce to a limited statutory examination.
- C) An entity which has 7 full time equivalents in annual average can always renounce to a limited statutory examination.
- D) An entity whose shares are listed at a stock exchange can renounce to an ordinary audit, when the size thresholds are not exceeded.

Question 19:

When performing a limited statutory examination which statement is wrong?

- A) The criteria to determine materiality in a limited statutory examination are similar to the criteria to determine materiality in an ordinary audit.
- B) In the planning phase of a limited statutory examination it is not necessary to perform a risk analysis but only recommended.
- C) For significant items of financial statements inquiries and analytical procedures are not sufficient.
- D) It is not necessary to prepare a detailed report to the Board of Directors when the entity is subject to a limited statutory examination.

6. Swiss Company Law

Question 20:

In a corporation (*société anonyme, Aktiengesellschaft*) (select the correct statement):

- A) For justified reasons, a shareholder has the right to obtain from the board of directors the disclosure of the name of fellow shareholders.
- B) The articles of incorporation may provide that shareholders have a prohibition to exercise an activity competing with the company.
- C) The articles of incorporation may provide for an exit right of any shareholder in the form of an obligation of the company to purchase the shares of a shareholder willing to exit.
- D) A prohibition to compete or an exit right may only be provided for in a shareholders' agreement entered into between shareholders.

Question 21:

X AG, a corporation (*société anonyme, Aktiengesellschaft*), has a share capital of CHF 1'000'000, divided into 10'000 registered shares of CHF 100 nominal value each. Its shareholders are A, who owns 60% of the shares and is chairman of the board of directors, and B, who owns the remaining 40%. A proposes to increase the share capital by CHF 500'000 in order to purchase the business of C. The subscription rights of the existing shareholders shall be withdrawn in order to allow C to subscribe the whole capital increase and contribute the assets and liabilities constituting his business, which has been valued at CHF 500'000. B disagrees with this project.

Select the correct statement:

- A) The contribution in kind (and its attributed value) has to be disclosed in the articles of incorporation, but not on the commercial register.
- B) The board of directors must report in writing on the nature and condition of the contribution in kind and the appropriateness of its valuation as well as on compliance with the resolution of the general meeting, in particular concerning the withdrawal of subscription rights. Such report has to be verified by an auditor.
- C) With a minority shareholding of only 40%, B cannot successfully block the proposed capital increase.
- D) Even if the company omits to disclose the contribution in kind and to draft a report, the acquisition of C's business will become fully valid and unquestionable and the office of the commercial register will have the obligation to register the capital increase, unless a shareholder introduces a claim challenging the decision of the shareholders' meeting to increase the share capital within 60 days from such decision.

Question 22:

Y SA, a corporation (*société anonyme, Aktiengesellschaft*), has an equity composed as follows:

Share capital: CHF 1'000'000, divided into 1'000 shares of CHF 1'000 each

General reserve: CHF 320'000

Losses carried forward: CHF 50'000

The profit of the last fiscal year amounted to CHF 250'000. The shareholders want to distribute as much dividend as legally possible. What is the highest amount of distributable dividend? (**select the correct answer**)

- A) CHF 250'000
- B) CHF 200'000
- C) CHF 185'000
- D) CHF 173'750

Question 23:

The articles of incorporation of a limited liability company (LLC, *Sàrl, GmbH*) may provide that (**select the incorrect statement**):

- A) Shares cannot be transferred, neither to existing members nor to third parties, subject however to the exit right of any member for justified reasons.
- B) Shares can be freely transferred, without the approval of the members' meeting.
- C) The names of the members of the LLC need not be published in the commercial register.
- D) The members are bound by a prohibition to compete against the company.

Question 24:

Which of the following information may not be registered in the commercial register with respect to a corporation (*société anonyme, Aktiengesellschaft*)? (**select the correct answer**)

- A) Purpose of the corporation.
- B) Intellectual property rights registered in the name of the corporation.
- C) Name of the persons authorized to represent the corporation.
- D) Domicile/seat of the corporation.

Question 25:

The balance sheet of Y SA shows assets of CHF 800'000, liabilities of CHF 1'000'000, a share capital of CHF 100'000 and losses carried forward of CHF 300'000. Bank X, which has a claim of CHF 420'000 against Y SA, has agreed in writing that its claim be repaid only after all other claims have been repaid, upon the condition that a similar subordination agreement is passed with B, a shareholder of Y SA who also has a claim against Y SA of CHF 150'000. Such agreement has not been passed yet. The board of directors is confident that the situation will improve and that the company will find sufficient financing within the next six months. How should the auditor act in this situation? (**Select the correct statement**)

- A) Notify the judge without any delay.
- B) Advise the board of directors that the company is overindebted, but tolerate a deadline of six months to allow the board of directors to improve the situation.
- C) Do nothing, as an important creditor has subordinated its claim for an amount that is higher than the overindebtedness.
- D) Advise the board of directors to establish two balance sheets, one at going concern and one at liquidation values. If both balance sheets show manifest overindebtedness, notify the judge if the board of directors fails to do so.

Question 26:

A corporation (*société anonyme, Aktiengesellschaft*) may request the registration of the following elements in the commercial register (**select the incorrect statement**):

- A) No director or officer has sole signatory powers; instead, all directors and officers have collective signature by two, but only with the chairman of the board of directors.
- B) A particular officer of the company has capacity to represent the company only in relation to the business of a particular branch.
- C) A particular officer of the company has capacity to represent the company for matters pertaining to the current business and with a maximum amount of CHF 100'000.
- D) A change in the corporation's purpose following the corresponding decision by the shareholders' meeting.

7. Swiss Social Security System

Question 27:

Mary is in good health and didn't visit any doctor in 2014.

However, due to poor oral hygiene, she had to go to the dentist to have several cavities treated. The invoice for services provided amounts to CHF 800.

Mary paid the bill directly. What amount will be reimbursed by the obligatory health insurance (LAMal)? (**select the correct answer**)

- A) The invoice amount less a deductible (« share of costs ») of 10% (i.e. CHF 720).
- B) The invoice amount less an annual threshold (« franchise ») of CHF 300 (i.e. CHF 500).
- C) The invoice amount less an annual threshold (« franchise ») of CHF 300 and a deductible (« share of costs ») of 10% on the remaining sum (i.e. CHF 450).
- D) Nothing, because dental care is in principle not covered by the obligatory health insurance (LAMal).

Question 28:

Which of the following statements is **correct** in relation to family allowances (FamZ/AFam)?

- A) Family allowances are always paid to the mother.
- B) Only one family allowance may be drawn per child; the law sets up priorities when both parents are eligible.
- C) The self-employed are not eligible for family allowances.
- D) Parents whose combined gross monthly income exceeds CHF 12'000 are not eligible for family allowances.

Question 29:

Which of the following statements is **wrong** in relation to the invalidity insurance (IV / AI)?

- A) Young people under the age of 18 are not entitled to any benefits from the invalidity insurance.
- B) The guiding principle of the invalidity insurance is “Rehabilitation precedes invalidity pension”.
- C) The degree of invalidity is not determined by the health impairment itself; it depends on the loss of earning capacity caused by the aforesaid health impairment.
- D) Contributions to the invalidity insurance (IV / AI) are levied together with the contributions to the old-age and survivors’ insurance (AHV / AVS) and the contributions to the income compensation allowances in case of service and in case of maternity (EO / APG).

8. Swiss and International Corporate Taxation

Question 30:

A Swiss company with a foreign permanent establishment (select the correct statement):

- A) Is taxable in Switzerland on its worldwide income, including the income attributable to the foreign permanent establishment. Only a double tax convention can limit Switzerland's right to tax.
- B) Is taxable in Switzerland on its worldwide income, except for the income attributable to the foreign permanent establishment.
- C) Is taxable in Switzerland on its worldwide income only if the effective management of the company is located in Switzerland.
- D) Is taxable in Switzerland on its worldwide income, including the income attributable to the foreign permanent establishment. This right to tax cannot be limited by a double tax convention.

Question 31:

A Swiss company shows a net yearly profit of CHF 2'000 on 31.12.2013. This profit includes a dividend of CHF 500 received from a 100% held subsidiary which represents a fair market value of CHF 500'000 (select the correct statement):

- A) The company can benefit from the participation reduction at federal level of 0.4% ($2'000 \cdot 100 / 500'000$). The tax computed at the 8.5% rate on the CHF 2'000 profit (=CHF 170) is reduced by CHF 0.68 (=0.4% of 170). The final tax amounts to CHF 169.32.
- B) The company cannot benefit from the participation reduction at federal level since the fair market value of the participation in the subsidiary is lower than CHF 1'000'000.
- C) The company can benefit from the participation reduction at federal level on 25% ($500 \cdot 100 / 2'000$). The tax computed at the 8.5% rate on the CHF 2'000 profit (=CHF 170) is reduced by CHF 42.5 (=25% of 170). The final tax amounts to CHF 127.50.
- D) The company cannot benefit from the participation reduction at federal level since the dividend (CHF 500) does not represent 2/3 of the total profits of the company (CHF 2'000).

Question 32:

X SA holds 100% of Y SA which in turn holds 100% of Z SA. The three companies have their seats in Switzerland. X SA decides to make a contribution of CHF 100'000 directly to Z SA (select the correct statement):

- A) The amount of CHF 100'000 represents a taxable profit at the level of Z SA for income tax purposes since it is not contributed by the direct shareholder. It is however not subject to the issuance stamp tax.
- B) The amount of CHF 100'000 does not represent a taxable profit at the level of Z SA for income tax purposes. It is however subject to the issuance stamp tax but can benefit from the CHF 1'000'000 franchise.
- C) The amount of CHF 100'000 is subject both to income tax at the level of Z SA and to the issuance stamp tax, but can benefit from the CHF 1'000'000 franchise.
- D) The operation has in principle no tax consequence at the level of Z SA for income tax and issuance stamp tax purposes, subject to the reservation of abuse.

Question 33:

Which of the following statements is correct?

- A) The sale of a 20% participation held in the private wealth of the shareholder is in principle always tax exempt for the purposes of income tax.
- B) The sale of a participation lower than 5% held in the private wealth of the shareholder is in principle always tax exempt for the purposes of income tax.
- C) The sale of a 10% participation held in the commercial wealth of the shareholder is in principle always tax exempt for the purposes of income tax provided that this participation has been held during at least one year.
- D) The sale of a 20% participation held in the commercial wealth of the shareholder is in principle always tax exempt for the purposes of income tax, excepted in cases where the indirect partial liquidation theory is applicable.

Question 34:

In 2012 Company X SA received a loan from its shareholder, domiciled in Switzerland, at a rate exceeding the rate which would have been applicable between third parties. The excess interest paid by Company X SA to its shareholder is estimated at CHF 5'000. The Swiss tax consequences for X SA will be the following if the exceeding interest is challenged by the Swiss tax authorities (**select the correct statement**):

- A) The 2012 taxable profit of Company X SA will be increased by CHF 5'000 and the Swiss withholding tax will be applied on CHF 5'000. The shareholder will be in a position to claim a refund of the withholding tax if the interests received have been declared correctly.
- B) Only the 2012 taxable profit of Company X SA will be increased by CHF 5'000. The withholding tax will not be levied since the shareholder is domiciled in Switzerland and could in any case benefit from a refund.
- C) Only the withholding tax will apply to CHF 5'000 and there will be no corporate income tax exposure.
- D) The Swiss tax authorities can require Company X SA to include the additional income of CHF 5'000 in its next tax return.

Question 35:

Company X has its statutory seat abroad in a country that has not concluded any double tax convention with Switzerland and is held (100%) by a shareholder in Switzerland. The shareholder flies each year to the company seat to hold the company's general meeting, whereas the day-to-day decisions are taken from Switzerland (**select the correct statement**):

- A) Company X has not its statutory seat in Switzerland and is therefore not taxable in Switzerland.
- B) Company X could be assimilated to a Swiss company since it is held at 100% by a Swiss shareholder and could therefore be fully taxable in Switzerland.
- C) Company X has its effective management abroad since all the general meetings are held abroad and can therefore not be taxed in Switzerland.
- D) Company X could be assimilated to a Swiss company since its effective management is located in Switzerland and could therefore be fully taxable in Switzerland.