

# Doing Business in Switzerland

Year 2007

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## Introduction

More and more international companies chose Switzerland as an ideal location. Although Switzerland is fiscally attractive, the choice of Switzerland as a location is not exclusively tax driven. Companies should also take the international and social environment that Switzerland can offer into consideration.

In this respect, it is worth mentioning that the location of a company is particularly important to employees. Indeed, the decision to establish in Switzerland is often coupled with the relocation of personnel. These employees, who often have a significant amount of experience within the group, must be given the incentive to remain within the company during the relocation.

The following characteristics make Switzerland a particularly attractive location from both a corporate and individual standpoint:

- European business center

Switzerland has the advantage of being in the heart of Europe. It is however not a full member of the European Union.

Its geographic position allows for easy access to other European cities, whereas its political position with regard to Europe allows Switzerland to enjoy more independence than other European countries. This is particularly reflected in its flexible and business-friendly approach.

- International community

Switzerland is recognized as a center for international businesses. It is a key player in international financial markets and is host to a significant amount of international organizations, technology development centers and medical research institutions.

Consequently, an international and multicultural environment has arisen wherein a wide variety of people live together in harmony. Some cities in Switzerland, such as Geneva, Lausanne and Zurich, have a particularly important international community. As a result, these cities have many international and English-speaking clubs and associations as well as

international primary and secondary schools, whose quality is widely recognized as being outstanding. The public school system, which is free, is top-rated, as are Switzerland's universities.

As English is commonly used, employees and their families can settle in quickly.

- Outstanding telecommunications

As a center for technology, the state-of-the-art telecommunications network is among the most advanced in the world and is constantly being upgraded to keep abreast of the latest developments in technology.

- Efficient transportation

Because Switzerland is a relatively small country, travel by car or public transport is easy and efficient. The public transport system is modern, reliable, and relatively inexpensive. The main international airports in Geneva, Zurich and Basel regularly connect with other world capitals. Employees and their families can therefore easily maintain business and personal relations with the international community.

- Quality of life

Switzerland has a reputation for having a high standard of living. Its natural surroundings allow for a wide range of recreational and sporting activities which include skiing, hiking, rafting, sailing, windsurfing, swimming, etc. In addition, it is rich in culture with many world-class music festivals, theaters and museums.

Unemployment and crime are very low in Switzerland especially compared with other EU countries and the United States.

- Qualified labor market

Swiss employees are known for their strong work ethic. In addition, companies can easily find the qualified labor and multi-lingual personnel required to carry out their business operations in an environment where strikes are uncommon. Extremely flexible employment legislation gives employers a large amount of freedom when concluding employment contracts.

With regard to social security and pension obligations, Switzerland has one of the most advantageous and cost-effective systems in Europe. It also has a

healthy network of social security agreements whereby expatriates can elect to maintain coverage in their country of origin during their stay in Switzerland.

- Government support

Swiss Federal and cantonal authorities are always encouraging new companies with investments in Switzerland. They are also open to constructive ideas in the framework of the establishment process. For example, the department of the economic promotion often assists in cutting through some of the administrative issues faced by newly established companies. The government also provides incentives for training workers in new skills and can make low-cost loans available.

- Relationship with tax administration

In comparison to the very concise and extensive tax legislation of many other states, the federal and cantonal/municipal tax legislation in Switzerland has been kept relatively brief and general, often leaving the taxpayers and the authorities a considerable scope of interpretation. This creates tax-planning opportunities for the taxpayers and, more important, sometimes the tax authorities give a competitive edge in their attempts to attract new taxpayers to their jurisdiction. Obviously, the comparatively open tax legislation also carries the inherent risk of its rules being interpreted against the interest of the taxpayer in doubtful or unusual cases. However, since most tax administrations are prepared to issue binding opinions (rulings) in advance, this risk can be eliminated in most cases. In fact, the cooperative and constructive attitude of the tax authorities is still one of the major advantages Switzerland has in the area of taxation.

## Individual Considerations

### 1. Procedures on entry

When the individual arrives at the Swiss border, he must be in possession of a valid permit and, depending on the permit, must prove an adequate housing opportunity. In those cases where a work permit is required, it is not allowed to enter Switzerland for work purposes before obtaining the respective permit.

### 2. Immigration categories / work permits

Work permit required: Anyone coming to work in Switzerland who is not a Swiss citizen should ensure to have the permission which allows him to carry out their proposed activities here. Business trips to Switzerland may be taken without a work permit as long as such a trip does not exceed 8 days in any consecutive period of 90 days.

General principles of immigration into Switzerland: The issuance of a work and residence permit for a foreigner is restricted, unless the employer can prove that no domestic worker can fill the position. Exceptions apply to highly qualified specialists. Furthermore, to avoid extensive immigration, the number of most first-time temporary permits is limited (restricted to annual quotas).

Allowance to work in Switzerland: Switzerland has made a reservation to uphold primary preferences for EU and EFTA applicants. Exceptions are made, however, for highly qualified specialists.

Duration of stay/work in Switzerland: Permits are limited in time. There are several types of permits available:

- Short-term permit; allows holder to stay up to 12 months in Switzerland (so called L-Permit); allows holder to stay up to 12 months (or up to 364 days in case of EU/EFTA nationals) in Switzerland
- Long-term permit (so called B-Permit); is generally issued for one year, but may be renewed annually (issued for five years for EU/EFTA citizens)
- Border permit (so called G-Permit); foreign workers living in the border zone of one of Switzerland's neighboring states may receive a border work permit in a defined border zone, provided that the worker returns at least weekly to his home abroad.

Allowance to come to Switzerland without working: Permits for foreigners who are not engaged in a gainful activity are primarily granted to:

- Students
- Retirees
- Affluent people who wish to settle down in Switzerland

Change of employment or place of residence in Switzerland: Permits are only valid for the canton where they are issued. Foreign employees who want to change their employment or move to another canton need additional approvals from the competent authorities. Approvals are only granted if certain conditions are met (exception: permits of EU/EFTA citizens are valid for the whole country).

Allowance of the family to accompany: Dependant family members of B-Permit holders (and L-Permit holders in the case of EU/EFTA nationals are generally granted the same permit for the same duration as the principal permit holder.

Application for a permit: Permit applications have to be fully substantiated and must include a comprehensive documentation. There are strict filing obligations to adhere to. Furthermore, the prerequisites for obtaining a residence and work permit may differ from canton to canton.

Work in Switzerland while the work permit application is pending: A visit for work purposes is not permitted in such cases.

Special requirements for self-employed business persons: A foreign national resident in Switzerland maybe self-employed only if he has a C-Permit (citizens of the EU/EFTA are entitled to work on a self-employed basis even without a C-Permit). The Permanent Residence Permit is granted after a residence of ten years in Switzerland or five years for nationals of privileged states. Neither the change of employment, self-employment neither domicile within whole Switzerland requires then any approval by the competent authority.

### **3. Procedures to follow during applications**

General points of applying for a work permit: Swiss permits are issued by the respective Cantonal Office of Industry, Trade and Labor or in certain

circumstances, by the Federal Office of Industry, Trade and Labor. The application requires the filing of the respective form together with a



comprehensive application letter either in German, French or Italian, depending on the Canton. Furthermore, a proper documentation is required.

Duration of the application process: Depending on the permit and the cantonal and federal requirements, the application process in general lasts four to eight weeks.

Key information and documentation requirements for temporary residence permit: The key information, covered by the application letter, should encompass the job description as well as the work and personal situation of the applicant and should be supported by proper documentation (e.g. curriculum vitae, diplomas, etc.). A detailed checklist can be obtained upon request at Ernst & Young.

Key information and documentation requirements for permanent residence permit: In principle, no additional information and documentation is required due to the fact that the Permanent Residence Permit (so-called C-Permit) is basically granted after 10 years (respectively 5 years for nationals of certain countries, e.g. EU/EFTA citizens) of uninterrupted residence in Switzerland.

#### **4. Immigration for dependants**

Basically, it depends on the nature of the permit whether or not you are allowed to bring your family with you. If you have a temporary or permanent resident permit, you can bring your wife and your under age children with you. If, however, you are a holder of a 120-day permit, or a border permit, you are in principle not allowed to bring your family with you.

If the permit holder has a Permanent Residence Permit (C-Permit), his under age children automatically receive the Permanent Residence Permit. The spouse of the permit holder receives the Permanent Residence Permit, if he/she has an uninterrupted stay of five years in Switzerland. If this condition is not fulfilled, the spouse will initially only receive a Temporary Residence Permit for the next five years, before a Permanent Residence Permit will be granted.

The general conditions for the acquisition of Swiss citizenship apply. A person born in Switzerland does not only obtain Swiss citizenship because of its Swiss place of birth. But there are special and favorable regulations for people born in Switzerland to obtain the citizenship.

## **5. Visa requirements**

Citizens of certain countries require visas in addition to other permission (such as work permit) and this must be obtained before they enter.

## **6. Other civil requirements**

The foreign national must register with the Foreigner's Police or with the Inhabitant Register Office within eight days after entering Switzerland. The registration procedure depends on the respective Canton. All residents in Switzerland, including Swiss nationals, must register any change of address. Furthermore, except for Swiss nationals and C-Permit-holders, the transfer of domicile into a different Canton and any change of employment is subject to prior approval by the competent authority.

In this context must be noted that Switzerland consists of 26 autonomous Cantons and tax rates vary from Canton to Canton and even from Community to Community. Therefore, if individual circumstances do allow it, choosing the Canton and Community of residence prior to the actual move might be worthwhile. Additionally, a significant amount of Cantons do levy church taxes if registered as a member of an official Swiss religion (i.e. Reformed, Roman Catholic or Old Catholic (Protestant)).

## **7. End of assignment procedures**

Before leaving Switzerland you should ensure that you officially deregister with the registration office (Einwohnerkontrolle) of the municipality where you were registered. We recommend that you deregister approximately ten days before actually leaving the country. Please note that the date of official deregistration is usually considered to be the end of your liability to Swiss taxation. Do not worry if your Swiss taxes are not finally settled by the day of deregistration. As long as Ernst & Young is your tax representative, the authorities will allow you to leave the country even if taxes have not been finally settled yet. The final settlement usually only takes place after already having left Switzerland.

## **8. Employment contract**

The employment contract is in general regulated by the Swiss Code of Obligations. Although no specific form is required, we advise to utilize a written contract.

## **a) Wages**

Salaries and wages at all levels are relatively higher in Switzerland than in neighboring industrialized economies. However, when the relatively low employer's social security contributions, long working hours and high productivity are taken into account, hourly labor costs are approximately the same as or even more favorable than in other European countries.

There is no national minimum wage. However, for many industries collective employment contracts prescribe a minimum wage.

## **b) Employee Benefits**

### Vacations

According to federal law, employees are entitled to four weeks paid vacation p.a. until they reach the age of 50. Employees over 50 and apprentices under the age of 20 are allowed five weeks of vacation per year.

There are nine legal national holidays each year, although additional days are granted by cantonal legislation and collective agreements. A 13th month (Christmas) bonus is customary. A company is required to pay year-end bonuses unless a disclaimer is made prior to employment that such payment is not customary.

### Employees Compensation

If the employees are prevented from performing their work through no fault of their own (for reasons such as sickness, accident or compliance with legal obligations), the employer has to pay the corresponding wages normally due for a limited period of time. Employers generally obtain insurance to cover this risk.

### Working Hours

The maximum legal working time amounts 45 hours a week for employees in industrial enterprises, for office staff, technical personnel and other employees, including sales assistants in large retail businesses. For all other salaried persons the upper limit is 50 hours.

The typical working week in most offices is 42.5 hours, comprising five 8.5-hour days. It is slightly higher for employees in the building industry. Typical office working hours are 8am to 5.30pm. Factory hours often start at 7am.

If an employer deems overtime work necessary, employees are generally obliged to perform it to the extent they are able and can be expected in good faith to do so. If the employee agrees, the employer may compensate overtime by granting extra time off; compensation time must be at least as long as the overtime worked. When compensation time is not desired or agreed upon, the employer must pay for overtime on an hourly basis at a salary of at least 125% of the regular wage. For employees at the middle management level and up, overtime work is considered to be included in the basic salary.

#### Termination of Employment

The employer or the employee may terminate employment at any time by giving notice. Both contractual parties are protected by law from abusive employment termination.

In comparison to most other European countries, the legal minimum term of notice in Switzerland are fairly short – one month for employees with up to one year of service; two months for over one to nine years of service; and three months for ten or more years of service.

Only employees with more than 20 years of service and who are 50 years of age at the time of dismissal have a right to severance pay – and then only if their pension plan does not provide sufficient benefits. Severance pay equals between two and eight months of salary. These moderate termination costs put Switzerland in a favorable competitive position compared to other European countries.

### **9. Old-age and Survivors' Insurance / Invalidity Insurance (AHV/IV)**

The aim of the old-age and survivors' insurance is to, at least partly, replace the loss of income due to retirement or death. The invalidity insurance is aimed at ensuring a basic lifestyle through rehabilitation measures or financial benefits for a person who becomes an invalid.

The old-age and survivors' insurance as well as the invalidity insurance are compulsory schemes that cover everyone who lives and works in Switzerland.

Contributions are calculated at 9.8% of gross earned income (no ceiling) of which 50% is borne by the employee.

Employers are required to withhold the amounts due by the employee on a monthly basis and remit the total amount to the social security authority.

## **10. Compensation for Temporary Loss of Income (EO)**

The aim of this insurance is to cover partially the loss of income during military and civil defense service and maternity. Since July 1, 2005 all women whether employed or self-employed are entitled to receive maternity benefits. For 14 weeks they will receive 80 percent of their average income before the birth, but no more than CHF 172 per day.

Contributions are calculated at 0.3% of gross earned income (no ceiling) of which 50% is borne by the employee.

Employers are required to withhold the amount due by the employee on a monthly basis and remit the total amount to the social security authority.

## **11. Occupational Benefit Plan concerning old-age, survivors and invalidity (BVG)**

While the old-age and survivors' insurance and invalidity insurance are designed to cover to an adequate extent the basic requirements of elderly people, survivors and disabled persons, the purpose of the occupational benefit plan is to supplement these and in this way to enable such persons to maintain their previous standard of living in an appropriate manner.

The occupational benefit plan scheme is mandatory only for persons working in Switzerland with an annual income of CHF 19,350 (as per 2006) or exceeding.

Contributions to the occupational benefit plans vary depending on a series of factors including the age, profession, sex, annual salary and previous contributions made by the employee. A progressive rate is applied to the gross salary. The older the employee, the higher the contributions.

There are maximum legal contributions, but many employers subscribe to schemes, which provide additional coverage.

On average, contributions for administrative personnel amount to 11.5% of gross earned income. Under Swiss law, a minimum of 50 % of the premium is borne by the employer. The remaining cost is withheld from the employee's salary.

## **12. Accident and occupational disease insurance (UVG)**

The compulsory accident insurance is a personal insurance, which covers the financial consequences of work and non-work accidents and occupational diseases. Compulsory insured are those who are gainfully employed in Switzerland.

Contributions to accident insurance can vary depending on the type of work accomplished, the sex and the age of the employee. A distinction is made between professional and non-professional accident insurance.

On average, contributions for administrative personnel amount to 1.5 % of earned income for each type of insurance. Professional insurance premiums are borne by the employer whereas non-professional insurance premiums are usually withheld from the employee's salary.

## **13. Qualified Fiscally Privileged Pension Schemes (3a)**

A qualified fiscally privileged pension scheme (3a) provides additional savings, which can be used to maintain a comfortable lifestyle after retirement.

The conditions governing entitlement, the level of the benefits etc., depend on the bank or insurance company product chosen by the employee. Up to a certain amount (2006: CHF 6,192 for employees) contributions to the 3<sup>rd</sup> pillar 3a can be deducted from the taxable income.

## **14. Sickness Insurance (KVG)**

Sickness insurance guarantees access to good medical treatment.

Sickness insurance is compulsory for every person living in Switzerland and must be arranged individually. It is generally not paid by the employer.

## **15. Unemployment insurance (ALV)**

Unemployment insurance provides benefits in the case of loss of employment, shortened working hours, lack of employment due to weather conditions and insolvency on the part of the employer.

Unemployment payments are also based on earned income. However, contrary to old-age and survivors' and invalidity insurance payments, there is a limit to the contributions. They are levied at 2% of annual salary below CHF 106,800.

Half of these amounts are charged to the employee from whose salary they are deducted.

## **16. Family allowances (FAK)**

Family allowances are the main form of compensation for the cost of bringing up children.

The entitlement to child benefit begins on the first day of the month in which the child is born and ends in most Cantons when the child reaches the age of 16 (or 25 for children under going education). Family allowance contributions vary from Canton to Canton. The entire charge is supported by the employer who makes the appropriate contributions to the social security authorities.

## **17. Daily allowance insurance in case of sickness (KTG)**

Daily allowance insurance in case of sickness is voluntary, and the cost depends on the amount of cover. This form of insurance covers certain portion of wages in the event of inability to work due to illness. Premiums may be equally divided between the employer and employee.

## **18. Exemptions for expatriates**

Switzerland has entered into a number of social security totalization agreements with other countries. As a rule, these agreements allow an individual to remain subject to the social security rules in his home country if he is seconded to another country for a period not exceeding five to six years.

This is nevertheless subject to the condition that the employee provides a certificate of secondment.

## **19. Bilateral agreements and social insurance**

The bilateral treaties between Switzerland and the EU/EFTA have taken effect on June 1<sup>st</sup>, 2002. One of the agreements within the bilateral treaties contains provisions on co-ordination of social security between Switzerland and the EU/EFTA. These provisions stipulate which social insurance system governs individuals with gainful activity. The innovations concern all Swiss citizens and members of the EU/EFTA states as well as all branches of social insurance with the exception of military insurance.

According to the treaty provisions, as a basic rule, a person in active employment is subject to social security only in one country. If he/she is simultaneously employed in more than one country, he/she is in principle covered by the system of the country of residence.

Persons who are insured under Swiss law and are provisionally seconded to a EU/EFTA Member State remain affiliated to the Swiss social insurance scheme for 12 months. With the assent of the foreign authority, the duration of the secondment and the continuing cover by the Swiss system may be extended for a maximum of 6 years.

## **20. Taxation of income and wealth**

As a consequence of the three levels of government in Switzerland with tax raising powers – federal, cantonal and municipal (communal) – there exists two distinct taxes on income: federal and cantonal/municipal. The federal tax system is applied on a consistent basis across the country. However each canton operates its own regime with diverse rules, exemptions and taxation rates. Municipal taxes are levied by the locality in which the individual resides and are determined as proportion of cantonal taxes. In addition, individuals in Switzerland are subject to taxation on their net wealth (net assets). Such tax is levied only at the cantonal and municipal levels.

The federal income tax rate is progressive with a maximum overall rate of 11.5% of taxable income.

The rate for cantonal tax comprises a base rate multiplied by a coefficient. This coefficient is subject to change intermittently. The municipal tax rate is



also determined by applying a coefficient to the base rate referred to above.

As a rule, with regards to personnel services income, all and any income received in cash or in kind by an individual as a result of lucrative activity is subject to income tax. This includes the basic salary, bonus, profit participations, awards under an employee stock purchase plan, contributions to an individual insurance plan, housing allowances etc.

#### **a) Scope**

Foreign nationals have deducted their tax directly from their salary (payroll tax or source tax). However, such payroll tax payment is considered a provisional tax payment only if the annualized gross compensation exceeds currently CHF 120,000 (in Geneva CHF 500,000). If the annualized gross salary exceeds the above mentioned amounts or if you have a foreign employer, your final Swiss tax liability is determined based on the information reported in the ordinary income tax return.

#### **b) Residents**

Residents of Switzerland are subject to federal income taxes and to cantonal/municipal income and wealth taxes. Each is based on similar principles and is imposed on worldwide income and net wealth at progressive rates.

Taxable income includes all earned income, whether received in cash or in kind, and the rental value of owner-occupied houses as well as pensions and investment income. However, exposure to Swiss taxation does not extend to assets invested in and income derived from businesses, permanent establishments or real estate located abroad. Such assets and income are only relevant for the purpose of calculating the applicable tax rates. Taxable wealth includes all assets and debts (e.g. bank accounts, shares and other securities, real estates, mortgages and other loans). However, generally said, capital gains are tax free in Switzerland (exemption for capital gains from Swiss real estates).

A foreign individual who becomes resident in Switzerland is fully subject to income and wealth taxation from the date of arrival.

**c) Non-residents**

Non-residents may be subject to Swiss taxes on various kinds of Swiss source income: Interest or dividends paid by a Swiss entity, income from real property or from business activities in Switzerland, directors' fees, or compensation for an activity performed in, and paid by a Swiss employer.

Generally, non-residents only have to file a tax return if they have real estate, or business activities (permanent establishment), in Switzerland. In other cases, tax is withheld at source. Depending on the tax treaty applicable, this tax may be partially or fully refunded, or credited against foreign taxes.

Moreover, a resident of a treaty country working in Switzerland for an employer, which is not resident in Switzerland, and being physically present in Switzerland for less than 183 days in the tax year or a period of twelve months (depending on the wording of the respective treaty), is normally exempt from Swiss income and wealth tax unless the employee's remuneration costs are directly or indirectly born by a permanent establishment of a fix base in Switzerland.

**d) Tax year**

For individuals, the tax year corresponds with the calendar year. If you become a Swiss tax resident, the first year's income in Switzerland is annualized for determining the applicable Swiss tax rates.

**e) Assessment basis**

The regular assessment basis is the current year.

**f) Family tax concept**

Married couples are normally assessed jointly; i.e. their income and wealth are aggregated (family tax concept). In order to minimize discrimination, different progressive tax rates apply for married and single persons. Another means of avoiding discrimination are higher deductible allowances (i.e. personal and family allowances) for married couples. Deductible items for both married couples and single persons include social security contributions, accident and health insurance premiums, company pension plan contributions and qualified private pension plan contributions (so called third pillar a), certain non-reimbursed business expenses, interest payments, repair and maintenance

costs of dwellings as well as certain charitable donations. Some of the deductions are limited to a certain amount or percentage (so-called standard deductions).

#### **g) Tax filing requirements**

Foreign nationals employed by a Swiss company and earning less than CHF 120,000 p.a. or non-residents are generally not required to file a Swiss tax return.

All other taxpayers are obliged to file an annual tax return. Tax returns are generally due at the end of March of each year. However, it is easy to extend the filing deadline. The Swiss federal and all cantonal tax authorities levy taxes on the basis of a tax return. Taxes have to be paid on assessments (tax invoices) received.

In general, foreign nationals pay taxes at source on their employment income. The tax at source represents a final tax liability and the expatriate does not need to file a tax return. The tax authorities require the tax payer to file a tax return only if the annualized gross salary exceeds the amount of CHF 120,000 (Geneva: CHF 500,000). The tax withheld at source in these cases clearly does not constitute the final tax liability, but an instalment on account of the total tax liability calculated on the basis of an ordinary tax return. A final tax assessment will be raised by the authorities. The refunds or demands for over- or underpayment will be established by this.

Taxes (with the exception of taxes withheld at source) are payable upon issuance of tax bills or assessments by the cantonal or municipal tax authorities.

### **21. Payroll administration**

Payroll administration generally involves some or all of the following:

- Employment contracts;
- Monthly payroll calculations;
- Social security deductions, compliance and declarations;
- Tax at source calculations and preparation of quarterly and annual returns;
- Pension and insurance deductions and relative declarations;

- Advice on all procedures in respect of new entrants, departures, claims, illness and other obligation affecting staff;
- Advice on any changes in the Swiss regulations concerning the employer's obligations towards staff;
- Preparation of the annual salary certificates;
- Advice on accounting procedures relating to staff;

It is uncommon for a non-Swiss group to centralize their payroll function outside Switzerland. This is primarily due to the fact that it requires the input of persons who are familiar with local legislation and the competent authorities will only send official correspondence to a local entity.

## Corporate Considerations

### 1. Commercial Law

The corporation (“Aktiengesellschaft” or “AG”) is the most popular form of legal entity in Switzerland. It requires a minimum of CHF 100'000 of capital stock. Upon incorporation of the Company, a contribution of at least 20% of the par value of each share but in any case at least CHF 50'000 shall have been made. Shareholders are not personally liable for any of a corporation's debts. The corporation may claim payments from shareholders only if and to the extent that their shares are not fully paid in.

Transferability of shares depends on the type of shares issued by the corporation. Bearer shares may be transferred by transferring the share certificates. Shares registered in the owner's name must additionally be either endorsed or assigned, depending on the provisions of the articles of incorporation. These provisions may set forth material restrictions on the transfer of registered shares, such as limits on total holdings or on foreign ownership, within limits set by law. The range of possible transfer restrictions is wider for non-quoted shares than for quoted shares. Furthermore, the transfer of registered shares requires the registration of the new owner in the share register of the company.

The limited liability company (“Gesellschaft mit beschränkter Haftung” or “GmbH”) shares some essential features of the corporation (the limited liability of the holders and the character of a company). However, it also has some characteristics of a partnership (direct management and control by the holders). It is an association of two or more persons or legal entities, with a stated capital of CHF 20,000 – 2 million. At least 50% of its capital, in cash or in kind, must be paid in and disclosed in the articles of incorporation at the time the company is founded. Every member has one vote for each CHF 1,000 of his or her contribution, unless the articles of incorporation provide otherwise. Partners/shareholders are personally, jointly and severally liable to third parties up to the aggregate amount of the stated capital not paid in. Shares may only be transferred before a notary public, the transfer must be recorded in a public deed and the transfer (including the new owners) will be published in the respective Commercial Register. This requirement may result in additional costs, depending on the face value of the shares. Full or partial transfer of shares requires the approval of three-quarters of the total

number of partners/shareholders representing three-quarters of the stated capital. The articles of incorporation may further restrict or even prohibit transfers.

Other forms of doing business include the cooperative, partnership, joint venture, foundation or branch.

To form a corporation (AG), Switzerland's most common form of company, the steps described below must be taken.

#### **a) Share Capital**

In case of a cash contribution, the share capital (entire or initial contribution) is transferred to a blocked account at a Swiss bank to be held in the name of the company until the company is registered.

If the contribution shall be made in kind, a written contribution agreement and a specific founders' report need to be filed with the Commercial Register. Furthermore, an auditor has to examine the founders' report and confirm its completeness and accuracy.

#### **b) Founders' Meeting**

The founders adopt the articles of incorporation, subscribe to all the initial shares, elect the members of the initial board and the auditors and have the minutes of the meeting notarized. The company must have at least three founders (who may act in a fiduciary capacity). This requirement has no practical consequences after the formation of the corporation because the transfer of all shares to one shareholder only is permissible.

#### **c) Board of directors' Meeting**

At its initial meeting, the board of directors determines the corporation's internal structure (election of chairman, officers, designation of the holders of signatory power and so forth).

#### **d) Registration of company**

The registration of the company must be prepared and signed by all board members and signatories and sent to the Commercial Register together with the notarized minutes of the founders' meeting and additional required information. This information includes the corporation's legal address, a statement of acceptance of office and duties by the board members and auditors, disclosure of the nature of the initial capital contribution of the founders (whether in cash or in kind), major assets to be acquired and a statement of non-violation of the Statute on Acquisition of Real Estate by Foreigners.

In most cases, the corporate name includes the element "Aktiengesellschaft" or the abbreviation "AG". If the name is to include a geographic term or a designation of a similar nature (for example, "European", "International", "Swiss", "Switzerland" and so forth), the respective guidelines need to be respected.

The corporation becomes a legal entity when it is entered in the Commercial Register.

#### **e) Capital requirements**

The minimum share capital of a stock company is CHF 100,000 of which at least CHF 50,000 must be paid in.

#### **f) Board of directors**

The board of directors may consist of one or more individuals elected by the general meeting. All the board members must be shareholders and the majority of them must be Swiss or EU citizens and domiciled in Switzerland.

The directors and corporate managers are liable to the company for the damage caused by their intentional or negligent failure to perform their duties. The corporation, individual shareholders, and, in case of bankruptcy, the corporation's creditors may sue board members for these violations.

### **g) Annual Report**

The board of directors is responsible for preparing the corporation's annual report to the shareholders. It contains the annual financial statements (profit and loss statement, balance sheet and notes) and a report on the course of the business and the financial status of the corporation. Under the law, active disclosure (publication) is required only for companies with publicly quoted shares or bonds.

### **h) Audit requirements**

All corporations must be audited annually. The auditors examine the books and the annual financial statements and submit their report at the shareholder's meeting.

### **i) Shareholder's Meeting**

A general meeting of shareholders must be held annually within six months after the close of the business year. The shareholders vote on the approval of the annual report and financial statements, pass resolutions on the agenda and elect the directors and auditors for their statutory term.

### **j) Stock Exchange Fee**

Corporate shares or obligations listed on a stock exchange are subject to an annual listing fee. The fee is usually paid for several years in advance as part of the initial listing fee.

## **2. Employment Law**

### **a) Application of Swiss employment law**

Based on article 121 para. 3 of the Swiss International Private Law (SIPL), the contractual parties may agree that either the law of the state in which the employee has his/her habitual abode or the law of the state in which the employer is domiciled is applicable.



If the contractual parties do not agree which law is applicable, according to article 121 para. 2 SIPL, the law of the state where the employee usually performs his duties is applicable.

Furthermore, the contractual parties may agree that either the ordinary courts in Switzerland or in the state in which the employee has his habitual abode shall have exclusive jurisdiction to decide any dispute based on or in connection with the employment agreement. Such a clause may not be validly agreed upon in advance.

**b) Main issues to be considered according to the Swiss Code of Obligation (CO) in order to set up an employment agreement**

Basically, Swiss employment law consists of three parts: contract law, mandatory employment law (sets certain minimal standards, e.g. minimal holiday p.a., maximum amount of working time per week, work at night, etc.), and treaty law (treaties concluded between „unions and employers” organizations). These rules and regulations are mainly stated in the private contract law (Art. 319 ff. CO) under the section „individual employment contract“ and the Swiss Labour Code.

Generally speaking, compared to regulations in other states, Swiss employment law is very liberal and leaves a lot of space for individual agreements. It is basically at the discretion of the parties how to establish the content of the agreement. However, the private contract law contains several mandatory provisions to be considered. In the following, the most important mandatory provisions and the main issues to be considered for the conclusion of an employment agreement are pointed out.

**c) Form of the contract**

Legally, no particular form is required for an employment contract. However, usually, the contracts are concluded in a written form. It can be a separate document or simply a letter confirming the essentials, which had been agreed upon between employer and employee. Even an orally concluded contract is legally valid and binding (but not recommended).

**d) Position, area of responsibility and duties of the employee**

The contract of employment should contain a section showing the position (e.g. marketing manager, finance manager), the area of responsibility as well as a detailed list of duties of the employee.

**e) Salary**

The payment of the salary is the main duty of the employer. Basically, the salary is paid at the end of each month, unless shorter periods or other terms have been agreed upon. With respect to the amount and the kind of the salary (basic salary, bonus payments, provisions, other extra payments, etc.) the parties are basically free under the condition that no minimum salaries are stipulated in collective labour agreement being applicable.

**f) Working time**

Basically, in Switzerland the legally fixed working time is 45 hours a week, whereas the parties may agree on a lower working time. For management executives, there are no working time limits to be mentioned.

**g) Termination of the employment**

If the employment was agreed for a fixed period of time, it is terminated without notice upon expiration of such period. An employment of indefinite length may be terminated by each party by giving prior notice.

The legal notice periods are as follows:

- First year of service: At the end of a month with a notice period of one month;
- Second and up to the ninth year of service: At the end of a month with a notice period of two months;
- 10 years of service and more: At the end of a month with a notice period of 3 months.

Please note that these periods may be altered by mutual written agreement, however, not shorter than one month and the same notice period for both, the employer and the employee have to be set.

## **h) Salary if the employee is unable to work**

If the employee, for reasons inherent to his/her person, such as sickness, accident, compliance with legal obligations, etc., is by no fault of his own unable to perform his/her work, the employer has to pay the corresponding salary for a limited period of time.

If no longer periods have been fixed by agreement, the employer has to pay the salary for three weeks during the first year of service and afterwards for longer periods varying from place to place in Switzerland. As an example, please find below the period foreseen by the scale of the Canton of Berne (most common scale in Switzerland):

- First year: 3 weeks
- Second year: 1 month
- Third and fourth year: 2 months, etc.

## **i) Holidays**

It is mandatory that the employer grants at least four weeks of individual holidays in each year of service in addition to the public holidays. The employer must pay the full salary during regular holidays. At least two weeks have to be taken at one time.

## **j) Competition ban**

The parties may agree (only valid in written form) that the employee confirms to refrain from engaging in any competitive activity during and after termination of the employment relationship, in particular neither to operate a business for his/her own account which competes with the employer's business, nor to work for, nor to participate in such a business, which competes with the employer.

Please note that the competition ban is only binding if the employment relationship has given the employee access to clients/client information or to manufacturing or business secrets, and if the use of such knowledge could significantly damage the employer's business. The competition ban has to be limited in time, territory and subject to be valid and enforceable.

### **3. Tax on incorporation and investment capital**

A federal issuance stamp tax is levied on share issues and other contributions to Swiss corporations. It is levied at a rate of 1% on share issues and capital increases in excess of CHF 1 million. No stamp tax is levied on the first CHF 1 million of capital stock regardless of the amount and the timing of the investment.

The tax base corresponds to the amount paid in exchange for the remittance of the shares. If there is a premium i.e. if the subscription price exceeds the nominal value of the shares, any costs linked to the share issue as well as the issuance stamp tax itself may be deducted.

In addition to issuance stamp tax, an annual capital tax is levied by cantons and communes. No such tax exists at the Federal level.

### **4. Corporate income tax**

Corporate income tax is levied at the federal, cantonal and communal levels. The tax year corresponds to the accounting year and tax returns are filed annually on the basis of statutory accounts.

#### **a) Jurisdiction to tax**

Under Swiss domestic law, a company is subject to full taxation if incorporated in Switzerland or if its place of effective management is located in Switzerland.

Corporate income tax is levied on net worldwide income generated by Swiss resident companies, with the exception of income attributable to foreign enterprises, permanent establishments or real estate. There may be other restrictions based on international treaty law.

#### **b) Principles of assessment**

##### **■ General expenses**

In order to determine net taxable income, the gross income generated during any given financial year is reduced by justifiable expenses. These include all and any expenses that are economically justifiable for the correct undertaking of business.

## ▪ Depreciation

The method of depreciation should be in line with usual business practice; both the declining balance method and the straight-line method are acceptable. The Swiss federal tax administration has issued special guidelines that refer to the rate of depreciation and extraordinary depreciation.

## ▪ Corrections and provisions

Provisions to cover doubtful accounts and expected liabilities are generally allowed for tax purposes as long as they are commercially justifiable.

With regards to inventory, any system of inventory pricing that is in accordance with accepted business practice and is used consistently by the taxpayer is presumed acceptable by the tax authorities. Swiss federal and cantonal regulations provide that the company may record a general tax-deductible reserve amounting to 1/3 of the inventory valuation.

As a general rule, a reserve of 5% of accounts due from Swiss debtors and 10% of those due from foreign debtors is allowed, without substantiation. In addition, provisions for specific accounts may be created if economically justifiable.

## ▪ Taxes

Swiss taxes are deductible. Hence, when calculating the rate of taxation, it is important to distinguish between the statutory rates, which are based on after-tax income, and effective tax rates, which are based on pre-tax income.

Non-recoverable foreign taxes are also deductible for as long as an international tax treaty does not grant additional relief by introducing the credit method.

## ▪ Loss carry-forwards

Tax losses in any given year may be carried-forward and can be used to offset any taxable income generated during the subsequent seven years. This is true for both Swiss federal, cantonal and communal tax purposes.

## c) Tax rates

For Swiss Federal tax purposes, a flat after-tax rate of 8.5% was introduced in

1998, which is applicable to all corporations. The effective pre-tax rate is 7.83%. Cantonal and communal tax rates vary depending on the canton and commune with jurisdiction to tax. On average, they are generally twice as high as federal rates.

The total federal, cantonal and communal after-tax rate e.g. for the city of Zurich is therefore 27.10%. The effective pre-tax rate is 21.32%.

Special tax relief may nevertheless be granted which can significantly reduce the rate of taxation (see paragraph c hereunder).

#### d) Thin capitalization

The Swiss Federal Tax Administration has issued guidelines which clarify the position with regards to thin capitalization and introduces debt / equity ratios.

With regards to financial companies, the debt equity ratio is generally fixed at 1: 6 (total 7). However, other Swiss companies must not have a debt that exceeds the following percentages of the market value of its assets:

Liquid assets	100 %
Receivables on supplies and services	85 %
Other receivables	85 %
Stock	85 %
Other circulating assets	85 %
Swiss bonds and foreign bonds in Swiss francs	90 %
Foreign bonds in foreign currency	80 %
Swiss and foreign quoted shares	60 %
Other shares and investments in limited liability companies	50 %
Participations	70 %
Loans	85 %
Installations, machines, tools, etc.	50 %
Operating real estate	70 %
Villas, parts of real estate, vacation houses and constructible land	70 %
Other real estate	80 %
Cost of constitution, increase of capital and organization	0 %
Other intangible assets	70 %

If a Swiss company has a debt in excess of these percentages, it shall be deemed to be thinly capitalized unless it can be proved that the debt has been provided by independent third parties and that neither the shareholders, nor any person who is close to the shareholders, have guaranteed the loan.

## **e) Mergers and reorganizations**

Corporate transactions such as mergers, reorganizations, acquisitions and spin-offs may be accomplished tax-free if the assets are transferred at book value and if other conditions are met. Because significant tax consequences may result, professional advice should be sought prior to undertaking such transactions.

## **5. Special tax relief**

Although the above rules are applicable to most operational companies in Switzerland, a number of different types of tax relief are available to Swiss and foreign investors alike. The following is a brief survey of some of the more common incentives:

### **a) Tax holidays for newly established corporations**

These incentives include exemptions from federal and cantonal (including communal) taxes for a period of up to ten years after inception of business. They depend upon the type and amount of investment, the number of jobs created, regional economic planning aspects, etc. Companies not receiving the maximum relief can expect tax reductions of 30-40% over varying periods of up to 10 years.

### **b) Relief on qualifying dividend income and capital gains**

This relief is available to all Swiss corporations regardless of their activity. Relief is available on dividend income received by a Swiss corporation, which owns at least 20% of the capital of another company, or a participation the value of which exceeds CHF 2 million. It is available on capital gains generated by a Swiss corporation, which owns at least 20% of the capital of another company for as long as the participation has been held for more than a year.

Companies with qualifying dividend income or capital gains can reduce their corporate income tax proportionally to the ratio between net earnings on such participations and total net profit. Losses incurred as a result of the sale of qualifying participations remain tax deductible.



As per transitional rules, capital gains from the sale of qualifying participations acquired prior to January 1<sup>st</sup> 1997 will not benefit from tax relief unless the sale takes place on or after January 1<sup>st</sup> 2007. Nevertheless, if a Swiss company should sell a participation to a group company abroad, the gain will be deferred until sold to a third party. Where the third party sale takes place on or after January 1<sup>st</sup> 2007, tax relief will be available.

### **c) Holding companies**

Holding companies, as defined, may take advantage of a special ruling for cantonal and communal tax purposes. There is no special relief from federal tax (except the above-mentioned relief on qualifying dividend income and capital gains).

These are companies whose main purpose and activity is to manage long-term financial investments in affiliated companies. They may not be actively engaged in business in Switzerland. At least two-thirds of the assets (or income) must be derived from long-term financial investments. Long-term financial investments include direct share holdings as well as long-term loans.

Holding companies are completely exempt from tax on income from dividends, capital gain and any other income derived from financial participations. They are also exempt from all forms of interest income.

### **d) Domiciliary companies**

Companies, which are primarily engaged in activities abroad, may take advantage of tax relief for cantonal and communal tax purposes. There is no relief from federal tax. This special tax ruling aims at attracting foreign investors interested in sales, financing, intellectual property or other operations outside Switzerland. The tax privileges take the form of taxing profits from trading outside Switzerland at substantially reduced rates.

### **e) Service companies**

In the case of Swiss resident companies providing co-ordination or management services to a multinational Group (technical, administrative or scientific assistance including research and promotion activities), Swiss tax law requires that a share of profit accruing to the group be assessed at the

level of the Swiss corporation. It is not feasible in many cases to determine the extent of the contribution of the Swiss resident company to the total profits of the group.

The profit assessable in Switzerland is therefore generally considered to be 5% of the total overhead expenses of the Swiss "management" or "service" company. Additional relief is also granted for cantonal and communal tax purposes as per the above-mentioned rules governing domiciliary companies.

#### **f) Principal companies**

In a typical Cost Sharing Structure, in which a Swiss company is to be the principal in foreign manufacturing and sales, the Swiss company will usually contract with manufacturing companies within or outside the group.

These so-called "Contract Manufacturers" will be provided with the raw material by the Swiss Principal and will only be charged with the pure production of the goods. During the entire manufacturing process the goods remain the property of the Swiss Principal and the Contract Manufacturers are usually remunerated for their service on a cost-plus basis.

In order to license technology or to sell the finished goods, the Swiss Principal can enter into "commissionaire" arrangements with group companies in the jurisdiction into which the products are to be sold. According to these commissionaire arrangements, the local sales companies will sell the products to the local customers in their own name on behalf of the Swiss Principal. The Swiss Principal will retain ownership over the goods until they are sold to the customer. The Sales companies will not bear any risk associated to the product sales. Consequently, the entire sales proceeds flow directly to the Swiss Principal. The Sales companies are usually reimbursed for their marketing efforts on a cost-plus basis.

In countries such as the U.K. whose domestic commercial law does not provide for commissionaire arrangements, so-called "stripped buy-sell" agreements are entered into with very similar results.

Typically in such structures, the bulk of the profit of the non-Swiss sales will remain with the Swiss Principal where there are very favorable tax incentives. Indeed, if correctly structured, a substantial portion of income can be deemed to be allocated to non-Swiss activities and can therefore be taken out of the Swiss tax net for both Swiss federal and cantonal/communal tax purposes

(factual branch exemption). This can lead to a total combined corporate income tax rate of between 5 and 10% on non-Swiss sales income.

#### **g) Finance branches**

Special relief is granted to finance branches that have a bank-like activity whereby foreign source income is taxable in Switzerland at a combined Swiss federal and cantonal rate of between 1 and 5%.

Indeed, for Swiss federal and cantonal/communal tax purposes, it is possible to deduct a significant portion of accounting profits on a notional basis. The underlying assumption behind this deduction is that, if the branch was a bank, it would be able to be capitalized in such a manner as to allow for a significant interest deduction.

For purposes of calculating the notional interest deduction of the branch, the branch is deemed to have a notional share capital equal to 1/11th of its total assets. Accordingly, no notional interest deduction is allowed on this deemed capital stock.

The notional interest is calculated on the balance of 10/11ths of the assets, which is deemed to be financed by a loan from the head office. Net income for both Swiss Federal and cantonal tax purposes is calculated on the basis of the net income as determined by the financial statements from which a notional interest of 10/11ths of such income is deducted (less a commission of 1/11ths). A further 10% (approx.) is deducted by way of a praecipuum to determine the net taxable income.

Additional relief is also granted for cantonal and communal tax purposes as per the above-mentioned rules governing domiciliary companies.

### **6. Tax on distributions of income**

A 35 % withholding tax is levied on profit distributions made by Swiss companies. Profit distributions include ordinary dividend distributions, liquidation proceeds, stock dividends and constructive dividends (hidden profit distributions). Withholding tax is levied in the hands of the Swiss company making the distribution regardless of the State of residence of the beneficiary.

There is no withholding tax on dividends paid to Swiss corporate shareholders subject to certain conditions.

Interest income accruing on inter company loans is not subject to withholding tax unless the loan is recharacterized as a bond or bank deposit or unless the interest due is recharacterized as a hidden profit distribution (see thin capitalization rules above).

There is no withholding tax on royalty payments made by Swiss corporations.

For Swiss resident shareholders, withholding tax is a means to enforcing compliance with Swiss income tax reporting requirements. Withholding tax is reimbursed by way of cash refunds (corporate taxpayers) or as a credit against income tax payable (individual taxpayers). This is subject to the condition that the assets and the income derived there from are correctly reported for income tax purposes by the beneficiary and that the reimbursement does not lead to an abuse of law.

The foreign shareholder of a Swiss company, on the other hand, may only obtain a full or partial reimbursement of the withholding tax by virtue of a tax treaty.

## **7. Value Added Tax**

Swiss Value Added Tax (hereafter: VAT) is a multistage consumption tax levied at every stage of production on the value added to taxable supplies. The amount of tax due by VAT-registered persons corresponds to the difference between the tax charged on sales of goods or services (output tax) and the tax payable on purchases (input tax).

Taxable transactions include the supply of goods or services on Swiss territory, self-supply of goods, the acquisition of services from abroad and the import of goods.

VAT is calculated on the basis of the consideration or price paid for the supply of goods or services at a standard rate of 7.6 %. However, certain goods and services, such as foodstuffs, medicine, books and newspapers, are taxed at the more favorable rate of 2.4 %. Lodging is taxed at 3.6 %. Others, including hospital treatment, insurance and certain banking operations, are exempt but may not recover the input tax i.e. exempt without credit.

As a rule, anyone who makes, in a regular and independent manner, taxable transactions in Switzerland in excess of CHF 75'000 p.a. must register for VAT in Switzerland. Although taxable supplies may exceed this threshold, there is no obligation to register if the turnover does not exceed CHF 250'000 and the annual VAT liability does not habitually exceed CHF 4,000 p.a.

Switzerland's VAT system follows the destination principle whereby the supply of goods and services is taxed in the country of consumption. The import of goods and services is therefore usually fully taxed. Conversely, exports are generally zero rated i.e. exempt with credit.

## **8. Securities transfer tax**

The transfer of ownership of certain specific securities which involve Swiss securities dealers are subject to a transfer stamp tax at a rate of 0.15% on securities issued by Swiss resident companies, and 0.3% on securities issued by non-resident companies.

Swiss securities dealers include banks and bank-like financial institutions as defined by Swiss banking law as well as investment fund managers. They also include individuals, companies, partnerships and branches of foreign companies whose essential activities consist in trading or acting as intermediaries in deals involving taxable securities.

Swiss tax law extends the definition of securities dealers to include companies that are not predominantly in the securities trading business. Indeed, companies who own taxable securities of a book value in excess of CHF 10 million also qualify as securities dealers.

## **9. International issues**

Switzerland has a large tax treaty network with over sixty-five comprehensive income tax treaties. Treaties provide for protection from international taxation for a number of different types of income.

With regards to interest and dividend income, most treaties follow the principles of the OECD model treaty. Hence, interest is generally exempt from withholding tax. Concerning dividends, withholding tax is generally limited to 5% if the recipient shareholder company directly holds at least 25% of the gross amounts of the capital of the company paying the dividends. This

tax can be reduced to zero as per certain tax treaty dispositions.

This being established, treaty relief is by no means automatic and can be subject to anti-abuse provisions. The following briefly summarizes some of the issues that should be taken into consideration.

#### **a) Foreign source income**

Foreign source income earned by Swiss corporations may be subject to a tax at source in the state of source for which it is only possible to obtain relief by applying an international tax treaty. However, prior to obtaining such relief, a Swiss corporation must either qualify under the 1962 Abuse Decree or under the limitation on benefits clause of a specific treaty.

There are two fundamental situations of abuse that the 1962 Abuse Decree aims to avoid. Firstly, the transfer of treaty favored income to non-qualified persons and secondly, the inappropriate accumulation of treaty favored income by Swiss resident companies that are controlled by non-residents.

Recently, the Swiss Federal Tax Administration issued a circular, which makes sweeping changes to the application of the decree.

Until now, a maximum of 50% of income for which tax relief is requested on the basis of a tax treaty may be used to satisfy contractual claims of persons not entitled to benefit from the treaty. This no longer applies to active companies, or holding companies, which are exclusively or almost exclusively involved in the management and financing of participations. Foreign contractual claims must however be commercially justifiable and substantiated. Active companies include those where the majority of shares are quoted and regularly traded on a recognized stock exchange or are directly held by such a company which is a resident of Switzerland.

The rule whereby foreign-controlled companies are required to distribute a minimum of 25% of gross treaty-protected income every business year has been relaxed for almost all Swiss resident companies.

Whereas beforehand, interest bearing debt vis-à-vis persons not entitled to treaty benefits could not exceed six times the equity of a Swiss company, it is now the general principals with regards to thin capitalization, which should be applied. These have been summarized previously.

**b) Swiss source income**

Profit distribution made by Swiss corporations are subject to withholding tax at 35%. This tax can be reduced to zero as per certain tax treaty dispositions. However, as demonstrated by the following examples, treaty relief is by no means automatic.

In the Netherlands-Switzerland tax treaty, for example, a Dutch beneficiary of Swiss source dividends may request a total reimbursement of the Swiss withholding tax in the situation where the beneficiary is a corporation, which holds at least 25% of the capital stock of the Swiss paying entity. It is therefore very interesting to use Swiss and Dutch companies as conduit companies whose primary purpose is to take advantage of the Switzerland-Netherlands tax treaty. However, the benefits of this treaty can be partially denied if the relationship between the companies in both Contracting States has been set up primarily for purposes of securing the 0% treaty rate. In the light of this, and in order to apply correctly the anti-abuse provision, Switzerland has introduced tight rules of application.

The Swiss Federal Tax Administration requires that the Dutch company should be economically justifiable in order to avoid all doubt as to the reason for setting up the Dutch company. If there is any doubt as to the economic justification of the relationship between the Swiss distributing company and the Dutch shareholder, the 0% treaty rate shall be refused. It is therefore strongly advisable to obtain a prior ruling from the Swiss Federal Tax Administration on this issue before any corporate restructuring or at least before the distribution of any important amount of dividends to a Dutch mother company.

Once it has been determined that the conditions of the Netherlands-Switzerland treaty have been fulfilled, the Swiss competent authorities shall not systematically apply the 0% treaty rate on all dividends distributed. Indeed, where the shares of a Swiss company are transferred to Dutch residents after having been held by non-Dutch residents for a certain length of time, the 0% treaty rate shall often be refused on any open reserves existing at the time of the share transfer.

It should also be noted that Switzerland has a 0% treaty rate on dividend distribution made by Swiss companies to majority shareholders in other jurisdictions including Austria, Denmark, Luxembourg, Finland, France, Sweden and Venezuela.

Although none of the tax treaties with these States has specific anti-abuse provisions limiting the application of the 0% treaty rate, it is generally felt by the competent Swiss tax authorities that the notion of abuse should be applicable to all tax treaties even though there may be no specific article. It is therefore possible that similar rules as those described above may also be applied to dividend distributions made by Swiss resident companies to qualifying shareholders in those countries.



## Competitive Advantages

The Swiss tax system offers numerous advantages for both foreign and domestic investors. The most important of these can be summarized as follows:

- Due to the complete exemption from income taxes on the cantonal/municipal level and to the extensive tax reduction on participation income (dividends/capital gains) for federal tax purposes, the tax costs of operating of a Swiss holding company are among the lowest in Europe. Furthermore, Switzerland's comprehensive treaty network reduces the tax burden on dividend payments to a Swiss holding company.
- The foreign branch exemptions stipulated in federal and cantonal/municipal tax laws allow a corporation to register in Switzerland and thus obtain access to the Swiss treaty network without income and capital of foreign operations (branches) being taxed in Switzerland. Even corporations with no activity in Switzerland can take advantage of this.
- Within the scope of the various cantonal/municipal tax privileges a Swiss resident corporation or a Swiss finance branch of a foreign corporation can be used as an efficient vehicle for group financing and treasury activities.
- The use of domiciliary companies offers opportunities for international trading operations, which are still unrivaled. In addition to the attractive tax aspect Switzerland's excellent communication and transportation infrastructure as well as the economy's relative security provide strong arguments for locating international trading companies in one of the Swiss cantons.
- Due to the special tax regimes, paired with the availability of a highly educated labor force possessing business and language skills, Switzerland is also well suited as a location for corporate headquarters and business support centers.
- Since individual taxation is favorable in many cantons, the transfer of employees to Switzerland is also beneficial. Furthermore, the standard of living, education, the access to cultural activities and other aspects of the infrastructure usually make Switzerland a pleasant place to live for the individuals concerned. For wealthy individuals wishing to spend their

retirement years in Switzerland, the possibility of lump-sum taxation and the inheritance and gift tax regulations are noteworthy advantages.

- Finally, the traditionally constructive relationship between taxpayers and the tax authorities, combined with the widely used possibility of obtaining advance tax rulings in order to minimize future tax risks, must be considered as one of the principal assets of the Swiss tax system.

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