

DOING BUSINESS

IN SWITZERLAND



The network
for doing
business

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1 – INTRODUCTION

UHY is an international organisation providing accountancy, business management and consultancy services through financial business centres in around 90 countries throughout the world.

Business partners work together through the network to conduct transnational operations for clients as well as offering specialist knowledge and experience within their own national borders. Global specialists in various industry and market sectors are also available for consultation.

This detailed report providing key issues and information for investors considering business operations in Switzerland has been provided by the office of UHY representatives:

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A detailed firm profile for UHY's representation in Switzerland can be found in section 8.

Information in the following pages has been updated so that they are effective at the date shown, but inevitably they are both general and subject to change and should be used for guidance only. For specific matters, investors are strongly advised to obtain further information and take professional advice before making any decisions. This publication is current at February 2016.

We look forward to helping you do business in Switzerland.

2 – BUSINESS ENVIRONMENT

Switzerland is an important centre for international business.

The factors listed below make it an especially attractive location for doing business.

CENTRAL LOCATION

Since the Middle Ages, Switzerland has played an active role in trade due to its geographically key position at the heart of Western Europe.

FREE ENTERPRISE ECONOMY

A business can only grow and develop when operating within a free enterprise environment. The Swiss economy is based on the principle of free enterprise. Freedom of trade and commerce has been guaranteed by the Swiss Constitution since 1847.

POLITICAL AND SOCIAL STABILITY

Ever since the foundation of the federal state, Switzerland has enjoyed uninterrupted political stability. This is evidenced by the pre-dominance of political parties which support the functioning of the market economy.

Even though the 8.24 million inhabitants of Switzerland belong to four different language groups and possess different cultural backgrounds, there is a high degree of tolerance and personal freedom. The strong relationships between employers and employees have provided an excellent social climate for decades, which has contributed to above average growth in the standard of living. Switzerland's policy of neutrality, to which the country is bound by its constitution, is an important factor in making Switzerland a good place in which to conduct business.

STRONG INTERNATIONAL LINKS OF THE SWISS ECONOMY

Due to the lack of any raw materials, as well as the impossibility of growing sufficient food for its population, Switzerland relies heavily on imports. On the other hand, Swiss industry produces goods of high quality and exports almost half of its production, and in some sectors more than 90% of goods. Excellent international relations also exist in tourism, telecommunications and the finance sector.

EFFICIENT CENTRE OF FINANCE

Switzerland is one of the leading and most efficient centres of finance in the world. Besides the local banks, international banks offer services such as foreign exchange, precious metals trading, asset management and underwriting. Interest rates are low when compared to other countries. This has a favourable impact on the attractiveness of doing business in Switzerland.

FACTS AND FIGURES ABOUT SWITZERLAND

| | |
|---------------------|---|
| Population: | 8.24 million inhabitants (2014) |
| Area: | 41,285 square kilometres |
| Population density: | 201 inhabitants per square kilometre |
| Currency: | Swiss Francs (CHF) |
| Languages: | Swiss German, French, Italian and Romanic |

3 – FOREIGN INVESTMENT

Switzerland offers ideal operating conditions for a foreign company.

Switzerland has liberal and business-friendly legislation, political and financial stability, and first-class infrastructure, as well as a highly motivated and well-trained workforce.

The country ranks as one of the world's most important technology locations. Leading domestic companies and well-known foreign companies have chosen Switzerland as their location for research, development and production activities in the following sectors:

- Bio/medical technology
- Information technology
- Telecommunications
- Pharmaceuticals and chemicals.

The high quality of the Swiss education system guarantees the competence and know-how found in the labour market, and provides a strong incentive for foreign managers and their families to relocate to Switzerland. The quality of research programmes is recognised worldwide.

Switzerland is also a prime location for international headquarters and management centres. Successful multinationals from all over the world have moved to Switzerland over the past few years, recognising that it is an ideal location from which to cover the European market.

Switzerland's international banking system and the multilingual capabilities of its professionals and academics, lay the foundations for a supportive and dynamic international environment.

4 – SETTING UP A BUSINESS

Swiss company law is part of the Swiss Code of Obligations.

The following sections describe some of the commonly used and most widespread forms of business organisation.

TYPES OF COMPANY

SOLE PROPRIETOR ("EINZELUNTERNEHMEN")

This type of business is carried out by a sole proprietor and has to be registered in the commercial register if it produces at least CHF 100,000 gross income per year. It is not a legal entity (ie the proprietor is personally liable for his/her business without any limitation) and the proprietor is subject to taxation. This form of business organisation is commonly used for smaller enterprises.

SIMPLE PARTNERSHIP ("EINFACHE GESELLSCHAFT")

A simple partnership is based on a contract of association between two or more partners and is a very loose formation without being a legal entity. Each partner is individually subject to taxation rather than the partnership itself. For business debts, each partner is personally liable with his/her own private assets. A simple partnership cannot be entered into the commercial register. This form of business organisation is often used for activities of short duration or for specific projects only (e.g. consortia or joint ventures).

COMMERCIAL PARTNERSHIP ("KOLLEKTIVGESELLSCHAFT")

To form a commercial partnership, two or more individuals enter into a contract of association in order to operate an enterprise based on commercial principles. A commercial partnership has a trade name and must be registered in the commercial register. Although it can acquire rights, incur liabilities, take legal action and be sued, the commercial partnership is not in itself a legal entity. Liability for debts is not limited to the capital of the partnership but is extended to the private assets of the partners in the form of joint and several liabilities. This form of business organisation can only be set up by individuals and liability is not limited to the capital of the company.

LIMITED PARTNERSHIP ("KOMMANDITGESELLSCHAFT")

A limited partnership has two kinds of partners – one must be liable for the business without any limitation, while others are only liable to the extent of their capital contribution. Only individuals can be partners with unlimited liability, whereas partners with limited liability may also be legal entities, such as corporations. Since the limited partnership is derived from the commercial partnership, other characteristics (such as rights and duties) are the same as described in the section above.

LIMITED LIABILITY COMPANY ("GMBH")

A limited liability company is a legal entity with fixed capital. The minimum capital is CHF 20,000 and this has to be fully paid in cash or in kind. For the formation of a limited liability company, one founder is required. Each partner (individual or company) participates with a capital contribution (minimum CHF 100 per share) and they must each have a name and domicile registered in the commercial register.

The management and representation of the company may be transferred to people who are not partners, but at least one of the managing officers must be domiciled in Switzerland. All partners and managers may be non-Swiss citizens.

In terms of auditing, the limited liability company is treated in the same way as the corporation.

CORPORATION ("AG")

The most common form of a company in Switzerland is the corporation. Because of the ease in which shares can be transferred, it is a very flexible form of business organisation. In most cases, foreign investors choose the corporation as the vehicle for their enterprise.

To reflect the importance of this type of entity, the regulations regarding corporations are outlined below.

FORMATION AND ADMINISTRATION OF CORPORATIONS

COMPANY NAME

The company name of a corporation is protected by law. It must therefore be distinguishable from the names of other corporations already existing in Switzerland. The name must not be misleading as to the company's commercial activity. Any national, regional or territorial designation can be used only if permitted by the federal commercial register. Within these limits, the choice of the company name is open. However, it is advisable to have the intended name checked by the authorities before the corporation is actually formed. The legal form has to be specified by adding the abbreviation for a corporation – 'AG', 'SA' or 'Ltd.'.

SHARE CAPITAL AND SHARES

The minimum capital for a corporation is CHF 100,000. At least 20% of the nominal value of each share, but not less than CHF 50,000 has to be paid (in cash or in kind) prior to incorporation.

The nominal value of a share must not be lower than CHF 0.01. It is possible to issue registered shares or bearer shares. Bearer shares are easily transferable. The company must maintain a share ledger for registered shares. The transferability of this type of share can be restricted, provided that the legal regulations are met.

ARTICLES OF INCORPORATION (STATUTES)

The statutes must contain various provisions prescribed by law. These include:

- Details of the company name and domicile
- The purpose of the corporation
- The share capital and contributions made thereto
- The number, the par value and the type of shares
- The calling of the general meeting of shareholders and the voting rights of the shareholders
- Arrangements for the administration and the audit

Additional items/clauses can also be adopted.

CORPORATE BODIES

There are three bodies in a corporation – namely the general meeting of shareholders (the supreme body), the board of directors and the auditors.

The general meeting of shareholders is called every year, within six months of the financial year end. It has the following powers which are inalienable:

- The adoption and amendment of the articles of incorporation
- The election of members of the board of directors and of the auditors
- The approval of the annual report and of the consolidated statements of account
- The approval of annual financial statements as well as resolutions on the use of the disposable profit, in particular, the declaration of dividends
- The removal of members of the board of directors.

This body passes all resolutions on matters which, by law or by the articles of incorporation, are reserved to the general meeting of shareholders.

The board of directors (the executive body) is composed of one or more members. Unlike in the past, they do not have to be shareholders. In general, the board of directors can take decisions on all matters that in law or in the articles of incorporation are not allocated to the general meeting of shareholders. The corporation must be represented by at least one person domiciled in Switzerland. This person either acts as a member of the board or as director of the company, each with authority to sign solely. Some duties of the board of directors are fixed by law as non-transferable and inalienable, and essentially comprise the supreme management and supervisory functions. The board of directors can be authorised by the articles of incorporation to delegate the management fully or partially to individual members or third parties ie natural persons, in accordance with special organisational regulations.

Auditors are elected by the general meeting of shareholders. Each auditor must be independent, qualified to fulfil their duties and licensed to offer audit services. In certain cases, they must meet special professional qualifications. Individuals, as well as commercial companies and co-operatives, are eligible as auditors. At least one auditor must have his/her domicile, registered office, or a registered branch office in Switzerland.

INCORPORATION AND COSTS

For the formation of a corporation, at least one founder is required. He/she declares in an authorised deed, the formation of the corporation, by adopting the articles of incorporation and by appointing the necessary bodies (eg auditors and board of directors). Each founder participates by subscribing his/her number of shares.

Cash contributions must be deposited for the exclusive use of the company at an institution subject to Swiss Bank Law. If the contributions are made in kind or by acquisition of assets (qualified incorporations), additional conditions must be met. Among other requirements, a contract of contribution in kind or acquisition of assets has to be entered into and the founders need to provide a written founders' report. This report has to be examined by auditors, whose report has to approve the adequacy of the valuation of the assets brought in or taken over.

The corporation acquires the right of a legal entity only at the time of entry into the commercial register. At that time, the paid-in share capital is released by the bank and put at the disposal of the company. The share capital cannot be paid back to the shareholders unless the corporation is liquidated.

Formation costs consist mainly of a 1% stamp duty on the issuance of shares levied on the contributions of shareholders exceeding CHF 1,000,000, and fees for professional/legal advice and for the public deed and the commercial register, as well as for a notice published in the Swiss Official Gazette of Commerce. The overall costs for a corporation with a share capital of CHF 100,000 are currently between CHF 4,000–10,000.

SWISS BRANCHES OF FOREIGN COMPANIES

Foreign companies may conduct business in Switzerland through a branch.

A branch must be registered in the commercial register of the canton where it is located and it may engage in all the same forms of business activity as a corporation. It must conform to Swiss law with regards to bookkeeping and the preparation of financial statements (see Section 7 – Accounting & Reporting).

It must be represented by at least one person who is domiciled in Switzerland. The branch can be sued in Switzerland for claims concerning its own business operations. It is taxable in Switzerland according to the rules of international tax allocation. As Switzerland has numerous double tax treaties with other countries, it is possible to avoid double taxation in most cases.

REORGANISATIONS

Mergers, de-mergers and transfer of assets between companies and company transformations are all regulated by the Swiss Merger Act.

Swiss merger law follows the principles of universal succession and continuity of membership. A transferring company in a merger will be dissolved, not liquidated. Under certain conditions, even companies in liquidation and those with negative retained earnings or net liabilities may be merged.

Cross-border reorganisations usually involve the transfer of the registered office, a merger, a de-merger or a transfer of assets. Under certain circumstances, a foreign company may, without liquidating and reincorporating, be directly transferred to Switzerland and a Swiss company may be transferred to a country abroad by submitting itself to a foreign law.

5 – LABOUR

SOCIAL SECURITY

Individuals working in Switzerland, either as an employee or if self-employed, are subject to additional charges for social security payments (eg for old age, disability and unemployment insurance).

The respective contributions, with the exception of the contribution for unemployment insurance, are charged on the total income earned in Switzerland. In addition, a total wealth tax is levied on individuals with no gainful activity.

Switzerland has social security agreements with numerous other countries. Before obtaining residence in Switzerland, a foreigner should have his/her social security situation carefully checked, especially if residence is only temporary.

RESIDENCE AND WORK PERMITS

Foreigners wishing to work in Switzerland require residence and work permits.

Initially, a residence permit is granted only on a temporary basis, usually for one year but with the possibility of extension. After five years of residence, a permit of permanent residence is usually granted.

BILATERAL AGREEMENTS BETWEEN SWITZERLAND AND THE EU

In December 1998, at a meeting in Vienna, sector-specific bilateral agreements between Switzerland and the EU were adopted. The agreements came into force on 1 June 2002 and cover seven areas:

- Air transport
- Land transport
- Free movement of persons
- Scientific and technological cooperation
- Government procurement
- Trade in agricultural products
- Mutual recognition in relation to conformity assessment.

FREE MOVEMENT OF PERSONS, SWITZERLAND – EU/EFTA

The right of free movement of Swiss / EU persons in accordance with the Free Movement of Persons Agreement is complemented by the mutual recognition of professional qualifications, by the right to buy property and by the coordination of social security systems. The same rules also apply to citizens of EFTA member states.

As a result of the EU's eastern European expansion on 1 May 2004, the agreement was supplemented by an additional protocol containing provisions for the gradual introduction of the free movement of persons in the ten new EU member states. The protocol came into force on 1 April 2006. In a referendum on 8 February 2009, the Swiss electorate approved the continuation of the Free Movement of Persons Agreement after 2009 and Protocol II for extending the Agreement to Romania and Bulgaria. The election results confirmed Switzerland's commitment to the Bilateral II agreements. The protocol came into force on 1 June 2009.

The Free Movement of Persons Agreement and its additional protocols lift restrictions on EU citizens wishing to live or work in Switzerland. The same rules apply to citizens of EFTA states.

Citizens of EFTA states have enjoyed free movement rights for several years already. In April 2014, the Swiss Federal Council abolished restrictions for EU-17 and EU-8 states. Citizens of these states currently are granted unrestricted free movement rights in case they have an employment in Switzerland or do not work in Switzerland but dispose of adequate funds. The citizens of Bulgaria and Romania will remain subject to restrictions until 31 May 2016 at the latest.

ATTENTION: SWISS IMMIGRATION REFERENDUM OF 9 FEBRUARY 2014

The federal popular initiative "against mass immigration" was adopted by a narrow majority of the electorate and a majority of the cantons on 9 February 2014. The initiative aims to limit immigration through quotas, as it had been before the bilateral treaties between Switzerland and the EU. The new constitutional provisions on immigration impose no requirements on how high the quotas may be or on who should set them. The implementation concept provides that the Federal Council will set the quotas and quantitative limits and allocate them to the cantons. The Federal Council will be advised by a committee made up of representatives from federal and cantonal migration and employment authorities and which will take account of a range of indicators relating to the economy and the jobs market.

The adoption of the initiative binds the Swiss government to renegotiate the entire EU labour market agreements with the EU within three years; the current treaties stay in force in the meantime.

SEPARATE QUOTAS FOR CROATIA

Following the referendum the Swiss government was no longer allowed to sign the already negotiated free movement accord with Croatia, which joined the EU in July 2013. The new Swiss constitution article is immediately binding for the federal council. Switzerland will grant Croatian nationals separate quotas as part of the admission to the Swiss labour market of third country nationals. These quotas consist of 50 one-year category B permits and 450 short-term category L permits.

6 – TAXATION

TAX SYSTEM

The tax system corresponds to Switzerland's federal structure.

Tax legislation operates at three levels – the federal, the cantonal and the communal. The federation, the 26 cantons and more than 2,700 communities have the right to levy taxes in accordance with their own laws. To simplify the procedure, direct taxes for all three levels are usually levied by the cantons or by the communities, which means that only one tax return has to be filed for all three levels of direct taxation.

The federation is mainly financed through indirect taxes whilst the cantons and communities are mainly financed through direct taxes. Therefore, cantonal and communal income taxes are of more importance than direct federal tax. As the tax rates vary widely from canton to canton and from community to community, it is important to consider the choice of (business) location as an element of tax planning.

FEDERAL TAXES

The following are the most important taxes levied at the federal level:

- Direct federal tax on the income of individuals and on the profits of legal entities
- Withholding tax
- Stamp duties (on shares and on securities transactions)
- Value added tax (VAT).

The principal taxes levied by the cantons and/or communities are:

- Direct taxes on the income and net worth of individuals as well as on the profit and capital of legal entities
- Inheritance and gift taxes (not levied by all the cantons)
- Real estate transfer and capital gains taxes
- Communal taxes.

TAX HARMONISATION

In order to simplify the tax system of Switzerland, the confederation enacted the Federal Act on the Harmonisation of Direct Cantonal and Communal Taxes (StHG). The StHG has been in effect since 1 January 1993. This law harmonises tax liability, the period of assessment and the subject of taxation, as well as procedure. The confederation, cantons and municipalities will continue to have their own authority over fixing their tax rates, the multipliers and the tax free amounts.

From a tax point of view, there are various ways of organising a corporation. In the following sections, the different tax treatments at federal and cantonal/communal levels are explained.

DIRECT TAXATION OF CORPORATIONS

ORDINARY TAX STATUS

Companies which do not merit tax privileges are fully taxed at federal rates, as well as at cantonal and communal level.

DIRECT FEDERAL TAX

Direct federal tax on profits is levied at a flat rate of 8.5% on taxable income. Because tax payments are tax-deductible, the effective tax rate is approximately 7.8%.

CANTONAL AND COMMUNAL DIRECT TAXES

The tax calculation and charge varies considerably from canton to canton. With regards to corporate income tax, some apply a calculation based on yield, others apply a proportional rate.

Capital tax is charged almost everywhere at a proportional rate. In some cantons, corporate income tax can be credited against the capital tax burden. The amount calculated in this way is, in most cases, only the basic rate, multiplied by a fixed yearly multiplier set by the cantons and communities according to their financial needs.

In conclusion, the corporate income tax charge for corporations differs in every canton and community of Switzerland. Overall effective corporate income tax rates (before tax) currently vary from approximately 12–24%. Elaboration on applicable tax rates must therefore be made on a case by case basis.

SPECIAL TAX REGIMES FOR DIRECT TAXATION

COMPANIES WITH PARTICIPATION DEDUCTION

A company with participation deduction is an operating enterprise which at the same time has substantial investments in other companies. An investment is substantial, in most cases, when it comprises at least 10% of the share capital of a particular company, or when the book value of the investment amounts to at least CHF 1 million. Corporate income tax on the profits is reduced in the ratio of the net income deriving from the participation to the total income of the company. Furthermore, capital gains on the sale of participation of at least 10% are tax exempt under certain conditions. The participation exemption as a 'smallholding privilege' is applicable for direct federal tax and for cantonal/communal corporate income tax.

HOLDING COMPANIES

Holding companies are enterprises whose main purpose consists of long-term investments in the share capital of other companies. Holding companies must not have a business activity (apart from the holding function) in Switzerland. A holding privilege is granted only by cantonal tax laws and is not applicable to direct federal tax. (However, at federal level, the participation deduction scheme mentioned above can be applied.) The holding privilege is granted when an investment or income deriving from the investment continuously amounts to at least 66.67% of the assets or income of the holding company. Provided the holding company criteria are fulfilled, the company is basically exempt from cantonal/communal corporate income tax. Holding companies benefit from a reduced capital tax rate. In a number of cantons, the tax is less than 0.01%. Most of the cantons stipulate a minimum capital of CHF 500, for example.

DOMICILIARY COMPANIES

A domiciliary company is an enterprise with no commercial activity in Switzerland but rather abroad. It generally does not have its own premises or staff in Switzerland. This confers a tax privilege which is often sought after by companies which do not fulfil the requirements for a holding privilege such as trading companies.

For direct federal tax, no domiciliary privilege is granted; all companies are taxed at the ordinary statutory rate of 8.5%. However, a domiciliary privilege is provided by most cantonal tax laws. De facto, the domiciliary company pays corporate income tax at substantially reduced rates and also benefits from a reduced capital tax (similar to holding companies).

AUXILIARY AND MIXED COMPANIES

A tax privilege is also granted exclusively at the cantonal/communal level for auxiliary and mixed companies, but not at the level of direct federal tax. An auxiliary company in Switzerland only operates a service function for another group company domiciled abroad. An auxiliary company may therefore possess its own premises and employ staff. It may also have commercial activities in Switzerland, which in most of the cantons are limited to a certain extent (normally up to 20%).

The income deriving from business activity with Swiss clients is taxed at ordinary rates. The foreign sourced income is de facto taxed at a reduced rate. Auxiliary and mixed companies also benefit from a reduced capital tax (similar to holding companies).

NIDWALDEN LICENCE BOX

For the time being Nidwalden is the only canton in Switzerland which has introduced a so-called 'Licence Box' regime. According to this regime, net licence income on a cantonal/communal level is subject to a reduced corporate income tax of approximately 1%. The 'Licence Box' regime combined with the federal direct tax rate results in an overall effective corporate income tax rate of 8.8%. The definition of 'licensing income' for the purpose of the regime is based on article 12 paragraph 2 of the OECD model tax convention. According to the Nidwalden regulations, capital gains on the disposal of intellectual property (IP) also qualify as licensing income.

CORPORATE TAX REFORM III

CONTENT

In September 2014 the Swiss Federal Council initiated the consultation phase for the third Swiss Corporate Tax Reform (CTR III). By doing so, the Swiss government reaffirmed its intention to preserve Switzerland's fiscal attractiveness.

For some years the above-mentioned cantonal tax privileges have been under increasing international pressure. The proposed CTR III has become necessary given the accelerated review of international tax practices by the EU as well as the OECD. The presented measures encompass the following:

- Abolishment of cantonal regimes for holding, domiciliary and mixed companies in the next four to six years
- Introduction of internationally accepted rules such as license box and notional interest deduction on equity
- Reduction of cantonal tax rates
- Tax-neutral step-up with tax effective amortization (in case of change of tax status)
- Change of Swiss participation deduction regime and limited tax loss carry forward

SCHEDULE

Interested parties such as the Swiss cantons, political parties and interested associations can share their views on the proposed measures until 31 January 2015. In addition to the feedback received during the consultation, the Swiss Federal Council will also take into account international developments that will occur in the meantime (e. g. OECD BEPS, EU Code of Conduct for business taxation and EU state aid rules). The Federal Council's dispatch for the attention of the Swiss Parliament is expected in the first half of 2015. Yet, parliamentary discussions may then be concluded by mid-2016 at the very earliest. In this case and provided that no referendum is taken by Swiss voters, the new law may come into force between 2018 and 2020.

TAX CHARGES FOR THE VARIOUS TYPES OF CORPORATIONS

Taxes are calculated on profits after tax, since taxes due are a tax effective expense. For international and national comparisons of tax charges, combined effective tax rates rather than statutory tax rates must be compared.

TAX HOLIDAYS FOR NEWLY ESTABLISHED COMPANIES

The cantons, together with the federal government, may grant tax holidays as an incentive for investments in Switzerland. The tax holidays are part of Swiss regional policy in order to enforce economically weaker regions. The tax incentives include exemptions for corporate income and capital taxes for periods of up to ten years. The extent of the tax exemption depends on the time and amount of investment, the number of jobs created and the regional economic planning aspects etc. It is recommended that investors negotiate tax incentives in advance of the establishment of a new company.

CAPITAL STRUCTURE AND MAXIMUM INTEREST RATES (THIN CAPITALISATION RULES)

A Swiss company must have a reasonable capital structure. A circular letter published by the Federal Tax Administration sets out the allowed debt-financing quotas depending on the quality of assets (eg participations can be debt-financed at 70%). Additionally, the maximum interest rate on debts may not exceed a certain limit. The Swiss Federal Tax Administration publishes annually the allowed maximum and minimum interest rates.

OTHER TAX CONSIDERATIONS

SWISS WITHHOLDING TAX

The Swiss withholding tax of 35% is levied on dividend distributions of Swiss companies, on interest payments on certain bonds, notes or debentures issued by Swiss debtors and on interest payments from deposits with Swiss banks. Switzerland does not levy withholding tax on arm's length royalty payments and arm's length inter-company interest payments are also not subject to Swiss withholding tax.

Since withholding tax is a source tax, it has to be retained by the debtor and basically remitted to the Swiss Federal Tax Administration; the beneficiary or shareholder directly receives only the net amount of 65%. If he/she is an individual (or a company) resident in Switzerland, he/she may be granted full relief on the 35% withholding tax (either at source or through refund). Non-residents and foreign corporations can seek full or partial relief from the 35 % withholding tax (either at source or through a refund) depending on the terms of the double tax treaty concluded between Switzerland and the respective country of residence. For the non-recoverable portion, many countries grant a tax credit. It should be noted that a number of Switzerland's double tax treaties rely on the beneficial ownership requirement and contain explicit misuse clauses to prevent 'treaty shopping'. Moreover, the Swiss Federal Court upheld a Swiss withholding tax case that a misuse clause is inherent in each double tax treaty.

Switzerland has concluded more than 100 double taxation treaties to prevent double taxation.

Moreover, effective from 1 July 2005, an agreement on taxation of savings income in the form of interest payments came into force between Switzerland and the EU. Article 15 of the agreement allows for full relief on Swiss withholding tax on intra-group dividends, interest and royalty payments, provided that certain criteria are met. A notification procedure can be applied and leads to direct relief at source, provided that all formal requirements are met in a timely manner.

FOREIGN WITHHOLDING TAX

Based on Switzerland's comprehensive double tax treaty network, Swiss corporations benefit from extensive access to recovery of foreign withholding taxes on dividends, interest and royalty income. In most cases, it is possible for the Swiss beneficiary of a payment charged with foreign withholding tax to claim a refund for at least one portion of the tax and to apply for a tax credit for the remainder. The right to recover foreign withholding tax might be restricted by specific treaty provisions and/or a direct tax privilege (see above).

In addition to the above-mentioned provisions of double tax treaties entered into by Switzerland, regulations of the Swiss Abuse Decree have to be met in order to be eligible for treaty benefits (foreign withholding tax refunds and/or credit, as outlined below). The Swiss domestic law Abuse Decree is designed to avoid the abuse of double tax treaties.

THE SWISS ABUSE DECREE

In the 1960s, Switzerland issued regulations on the abuse of double tax treaties concluded by Switzerland (the so-called 1962 Abuse Decree). The aim of the Abuse Decree is to avoid the use of the Swiss double tax treaty network by people or companies who should be out of the scope of treaty benefits.

The Abuse Decree targets the following:

- Abusive transfers of income to non-qualifying persons (use of conduits; 50% base erosion test)
- Inappropriate profit distributions (mandatory distribution rules)
- Fiduciary relationships
- Foreign-controlled family foundations and partnerships.

The rules of the Abuse Decree only apply in the absence of a specific treaty provision. The Swiss Federal Tax Administration publishes a list of treaties with specific anti-abuse rules.

However, the Swiss Federal Tax Administration has published several circular letters which have partially relaxed the conditions laid down in the 1962 Abuse Decree over the last few years. It is therefore vital to consult the applicable tax treaty and to gain details on the rules which would apply to each specific case.

VALUE ADDED TAX (VAT)

Swiss VAT applies to the following transactions:

- Supply of goods and services rendered by taxable persons in Switzerland
- Acquisition of services and, in certain cases, of goods by recipients in Switzerland from undertakings with their place of business abroad and not registered for Swiss VAT purposes (acquisition tax)
- Import of goods (import tax).

Any person engaged in an entrepreneurial activity is liable to VAT, regardless of the person's legal form, purpose or profit motivation. However, a tax exemption may be possible for businesses which do not exceed an annual turnover of CHF 100 000.

A foreign business without its legal seat or fixed establishment in Switzerland must appoint a tax representative.

If a service (or in certain cases the supply of goods) is provided by a business established abroad, the Swiss domestic recipient is liable for the payment of acquisition tax (a reverse charge mechanism). In cases where the domestic recipient is not already registered for VAT purposes based on the turnover, the domestic recipient is subject to tax liability if the total of such taxable supplies exceed the amount of CHF 10 000 per calendar year.

Import tax is levied on the value of imported goods. Such value also includes taxes (excl. VAT itself) and costs levied before the goods are delivered to their initial destination in Switzerland.

Different rates apply for Swiss VAT. The standard rate is 8%, but certain goods (eg food and drink, medicines, etc.) are subject to a reduced rate of 2.5%. Overnight stays (including breakfast) are subject to a special VAT rate of 3.8%.

Swiss VAT law provides for a whole range of goods/services that are exempted from VAT. However, this means that for some of these, no input tax deduction is possible.

In some cases, an option for voluntary tax liability is possible. Registration for a VAT group can be obtained under certain preconditions.

7 – ACCOUNTING & REPORTING

COMMERCIAL ACCOUNTING

Legal entities and companies in sole proprietorships, as well as partnerships with revenues of at least CHF 500,000 in the preceding financial year, are obliged to keep company books and to prepare an annual report.

A company must be able to provide information on its financial situation, including liabilities and outstanding claims. At the end of each financial year, financial statements (balance sheet, income statement and notes) have to be prepared. There are minimum requirements with regards to the structure of the balance sheet, the income statement and the notes.

Companies that are subject to an ordinary audit have to prepare a cash flow statement and a directors' report, as well as include extended notes to the financial statements. Besides other information, the directors' report will need to include indications about the future outlook of the company's business and information on the risk assessment. Furthermore, companies listed on the stock exchange or certain types of company have to prepare consolidated financial statements.

The company books and financial statements may be kept and presented in the national currency or in the functional currency (with national currency disclosures).

SWISS RULES ON ACCOUNTING AND REPORTING

The basic rules of accounting in Switzerland are stated in the Swiss Code of Obligations (OR).

The protection of creditors is an important aspect of the OR. Therefore, accounting according to the OR follows a principle of prudence. Companies are authorised to accumulate hidden reserves (e.g. with faster depreciation, excessive provisions). Taxes are levied on the balance sheet, allowing companies to understate their actual profit.

In addition to these elementary rules, a specific Swiss true and fair standard, mainly for consolidated (not tax relevant) financial statements, has been established and is widely used. The aim of the Swiss GAAP FER (Generally Accepted Accounting Principles – *Fachempfehlungen zur Rechnungslegung*) is to provide a true and fair view on the financial position, the results of operations and cash flows. Swiss GAAP FER is set as the minimum standard for companies quoted on the stock exchange (the Domestic Standard or the Standard for Real Estate Companies of the SIX Swiss Exchange or on the Berne eXchange). Being a principle-based standard, a major goal of Swiss GAAP FER is to offer a good cost-value ratio to small and medium-sized enterprises. Furthermore, Swiss GAAP FER facilitates an upgrade to international principle-based standards such as the International Financial Reporting Standards (IFRS). All companies listed on the Main Standard of the SIX Swiss Exchange have to prepare their consolidated financial statements in accordance with IFRS or US GAAP.

IFRS is typically used by international companies in Switzerland, however, all companies have to prepare Swiss statutory accounts in line with OR for tax purposes.

AUDIT RULES

Depending on the size and economic relevance of a company, the law provides for two types of audit – the ordinary audit and the limited statutory examination.

Public and economically significant companies are subject to an ordinary (full scope) audit by a state-supervised audit firm (public companies) or a licensed audit expert (for economically significant companies). Other companies are generally subject to a limited statutory examination (comparable to a limited review) by a licensed auditor.

Whilst small and medium- companies may also opt up for an ordinary audit, micro-enterprises may opt out (have no audit at all).

8 – UHY REPRESENTATION IN SWITZERLAND

CONTACT DETAILS

Balmer-Etienne AG
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CONTACTS

Liaison contact: Stephan Vollenweider
Position: Partner, Head of Corporate Finance
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Liaison contact: Urs Matter
Position: Partner, Head of Audit Switzerland
Email: urs.matter@balmer-etienne.ch

Year established: 1948
Number of partners: 10
Total staff: 80

OTHER IN-COUNTRY OFFICE LOCATIONS AND CONTACTS

Zurich, Stans.

BRIEF DESCRIPTION OF FIRM

Balmer-Etienne ranks amongst Switzerland's leading audit and consultancy companies. Our service range spans areas of business: audit, finance, tax and law. Balmer-Etienne is structured as a partnership.

SERVICE AREAS

Financial auditing
Tax consultancy
Business consultancy
Legal consultancy
Accountancy
Real estate consultancy

PRINCIPAL OPERATING SECTORS

Not Known

LANGUAGES

German, English, French.

OTHER COUNTRIES IN UHY CURRENTLY WORKING WITH, OR HAVE WORKED WITH IN THE PAST

France, Germany, Spain, UK, US.

BRIEF HISTORY OF FIRM

The company was established in Lucerne in 1948, adding offices in Stans and Zurich as the firm expanded. Balmer-Etienne is now one of the top ten advisory firms in Switzerland focussing on providing services to mid-sized companies.



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