



Doing Business in Switzerland

2009

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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 residence and/or work permit and, depending on the nationality, an entry visa. Further, in some cantons, depending on the permit, an adequate housing opportunity must be proved. In those cases in which a work permit is required, it is not allowed to enter Switzerland for work purposes before obtaining the respective permit. The applicants have to stay abroad during the whole application process.

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 90 days per calendar year. However, it is in the authorities' discretion to define business meetings and work. Generally, work is interpreted in a large sense by the competent authorities, so that it is recommended to clarify the legal situation before starting the proposed activities in Switzerland. Working without a work permit is only allowed in specific cases and for a maximum of 8 days per calendar year.

General principles of immigration into Switzerland: The issuance of a work and residence permit for a foreign citizen of countries other than the EU-17 member states (the "old" 15-EU member states Belgium, Germany, France, Italy, Luxemburg, Netherlands, Denmark, Ireland, Great Britain, Greece, Portugal, Spain, Finland, Austria and Sweden plus Malta and Cyprus) and the EFTA member states (Iceland, Liechtenstein and Norway) is restricted, unless the employer can prove that no domestic employee can fill the position. Exceptions apply for intra-company transfers and to highly qualified specialists. Furthermore, to avoid extensive immigration, the number of most first-time temporary permits is limited (restricted to annual contingent quotas).

Allowance to work in Switzerland: Switzerland has made a reservation to uphold primary preferences for EU-17/EFTA applicants (member states, cf. above). Duration of stay/work in Switzerland: Permits are limited in time. There are several types of permits available:

- For work during less than 90 days a calendar year a simple notification process generally applies for employees seconded from an EU-25 member state (Belgium, Germany, France, Italy, Luxemburg, Netherlands, Denmark, Ireland, Great Britain, Greece, Portugal, Spain, Finland, Austria, Sweden, Cyprus, Malta, Estonia, Latvia, Lithuania, Poland, Slovakia, Slovenia, Czech Republic and Hungary) or from an EFTA member state (member states, cf. above). This means the employer must have his seat in an EU-25/EFTA country. In such a case, a work permit is not necessary. However, the 90 days may only be used once a year by the same foreign company. Non EU-25/EFTA citizens need a work permit for activities of more than 8 days per calendar year. Romania and Bulgaria are currently still considered as non EU member states from an immigration perspective. Thus, for employees seconded from Bulgaria and Romania, the notification process is not (yet) applicable, but they need also a work permit for gainful activities of more than 8 days per calendar year. For an EU-8 national (Estonia, Latvia, Lithuania, Poland, Slovakia, Slovenia, Czech Republic and Hungary) with a Swiss employer for up to 3 months a work permit is generally required before taking up work in Switzerland (the notification process is not applicable in the case of a Swiss employer, whereas for EU-17/EFTA nationals the notification procedure applies in such a case).
- Short-term permit; allows holder to stay up to 12 months in Switzerland (so called L-Permit); may be extended to a maximum period of 24 months; can be issued without the restriction of contingent quotas for four months at maximum.
- Long-term permit (so called B-Permit); is generally issued for one year, but may be extended annually (issued for five years for EU-25/EFTA citizens).
- Cross-Border permit (so called G-Permit); foreign employees living in the border zone of one of Switzerland's neighboring states may receive a cross-border work permit in a defined border zone, provided that the employment contract with the Swiss employer has been concluded for more than three months and the employee returns at least weekly to his domicile abroad. For EU-17/EFTA citizens the border zone was abolished, they can stay in any EU-25/EFTA state, but have also to return once a week to their home residence country.

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

- Students

- Retirees (from an age of 55 at least)
- Patients for medical treatments
- Affluent EU-25/EFTA citizens 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 with a short (L-Permit) or long term permit (B-Permit) who want to move to another canton need additional approvals from the competent authorities. Cross-border commuters (with a G-Permit) and L-Permit holders need a prior approval for change of their employment. Approvals are only granted if certain conditions are met. For EU-17/EFTA citizens permits are valid for the whole country.

Allowance of the family to accompany: Dependant family members of B-Permit and L-Permit holders are generally granted the same permit for the same duration as the principal permit holder.

Application for a permit: Permit applications have to be motivated 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. Alleviated procedures apply to EU-17/EFTA nationals.

Work in Switzerland while the work permit application is pending: A visit or work is not permitted during the application process. Only EU-17/EFTA nationals with a local employment agreement may take up work immediately after registration and do not need to proceed an application process from abroad.

Special requirements for self-employed business persons: A foreign national resident in Switzerland will obtain an authorization for a self-employed activity only under restrictive requirements (citizens of the EU-25/EFTA states are entitled to work on a self-employed basis). The change to a self-employed activity needs prior approval of the competent authorities.

3. Procedures to follow during applications

General points of applying for a work permit: Swiss permits are issued by the respective Cantonal Migration Office. The Cantonal Office of Industry, Trade and Labor and the Federal Migration Office have first to approve the application. 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. Permits for EU-17/EFTA nationals may in general be obtained within two to four weeks.

Key information and documentation requirements for temporary residence permit (long term permit, B-Permit): The key information, covered by the application letter, should encompass the job description, the salary and the duration of the employment or assignment. Further, the work experience and the personal situation of the applicant have to be described 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 (5 years respectively for some nationalities) of uninterrupted residence in Switzerland.

4. Immigration for dependants

If you have a temporary or permanent residence permit, you may apply for family regroupment for your spouse/husband and your children under 18 years of age. Citizens of the EU-25/EFTA member states are entitled to family regroupment including parents, whereas regarding citizens of other countries the decision is at the migration authorities' discretion. If the foreign national is entitled to a permanent residence (C-Permit), his children under 12 years of age automatically receive the C-Permit. The principal permit holder's spouse/husband and/or their children older than 12 years will only receive a C-Permit, if he/she has an uninterrupted stay of five years in Switzerland and he/she lives in the same household as the C-Permit holder. If this condition is not met, the spouse/husband and/or children over 12 years of age will initially only receive a Temporary Residence Permit (B-Permit) for the first five years. After this period of time a C-Permit will be granted.

The general conditions for the acquisition of Swiss citizenship apply. A person born in Switzerland is not automatically entitled to receive the Swiss citizenship because of the Swiss place of birth. But there are special and more favorable regulations for people born in Switzerland to obtain the Swiss citizenship.

5. Visa requirements

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

6. Other civil requirements

The foreign national must register with the Cantonal Migration Office or with the local community office within fourteen days after entering Switzerland and in any case prior to taking up work. The registration procedure depends on the respective canton and residence community. All residents in Switzerland, including Swiss nationals, must register any change of address. Furthermore, except for Swiss nationals, EU-17/EFTA citizens and C-Permit-holders, the transfer of domicile into a different canton is subject to prior approval by the competent authority.

Switzerland consists of 26 autonomous cantons. Therefore, tax rates vary from canton to canton and even from community to community. Therefore, depending on the specific circumstances, 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 local community office (Einwohnerkontrolle) of the municipality where you were registered. We recommend deregistering 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 regulated by the Swiss Code of Obligations in general. Although no specific form is required, it is recommendable to conclude a written contract. Otherwise, the employer has to inform the employee in writing on certain essentials if the employment relationship has been concluded for more than one month.

a) Salary

Compared to neighboring industrialized economies, salaries at all levels are relatively high in Switzerland. However, taking into account the employer's

comparatively moderate social security contributions, long working hours and high productivity, hourly labor costs are approximately the same as or even lower than in other European countries.

There is no statutory minimum wage in Switzerland. However, for many industries collective employment contracts prescribe a minimum salary.

If the employees are prevented from performing their work through no fault of their own and for reasons inherent to their person, such as sickness, accident or compliance with legal obligations (e.g. military service), the employer has to pay the corresponding salary for a limited period of time. Employers may obtain insurance to cover certain risks, especially sickness (see section 17 hereinafter).

There is no legal entitlement to a 13th salary payment at the end of the year though this is customary in many companies. Bonus payments are voluntary in the first place but may become enforceable if certain conditions are met or if it is deemed part of the salary.

b) Working time

The maximum legal working time amounts to 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 employees the limit is 50 hours.

The typical weekly working time in most offices amounts to 42.5 hours, comprising five 8.5-hour days. Typical office working hours are 8 a.m. to 5.30 p.m. Factory hours often start at 7 a.m.

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 contractual parties agree upon in writing, the employer may compensate overtime by granting extra time off; compensation time must be at least as long as the overtime performed. When compensation time is not agreed upon, the employer must pay for overtime on an hourly basis at a rate of at least 125% of the base salary. For employees at the middle management level and up, overtime work up to 45 respectively 50 hours a week can mostly be considered to be included in the base salary.

c) Vacations

According to federal law, employees are entitled to at least four weeks of paid vacation p.a. Apprentices under the age of 20 are legally entitled to at least five weeks of vacation per year. The employer determines the date of the vacation but has to respect the employee's wishes to the extent they are reconcilable with the business concerns. At least two weeks of vacation have to be granted consecutively.

1st of August is the only Swiss national bank holiday. The cantons grant up to 8 additional public holidays (such as Easter, Christmas, 1st of January, etc.). Paid holidays may also be granted through collective labor agreements, or by each employer on a voluntary basis.

d) Termination of Employment

The employer or the employee may terminate employment at any time by giving prior notice. Both contractual parties are protected by law from abusive employment termination. The notice period must be of the same duration for both contractual parties.

In comparison to most other European countries, the legal minimum notice periods in Switzerland are fairly short – one month for employees with up to one year of service; two months from the 2nd to the 9th year of service; and three months in the 10th year of service or afterwards.

Only employees with more than 20 years of service and who are 50 years of age at the time of dismissal are entitled to severance pay – however, only to the extent their pension plan does not provide sufficient benefits. Severance pay equals 2-8 monthly salary payments in general. As generally the pension plans grant more than 8 monthly salaries, severance payments are seldom in practice.

9. Old-age and Survivors' Insurance / Invalidity Insurance (AHV/IV) – 1st pillar

The purpose 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 provides a person wholly or partially disabled with rehabilitation measures and/or financial benefits. Both insurances are designed to ensure a person's basic living only.

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 10.1% of gross income (no upper limit) of which 50% is borne by each the employee and the employer.

Employers are required to withhold the amounts due by both the employee and the employer on a monthly basis and transfer the total amount to the competent cantonal social security authority.

Since January 1, 2008, small businesses with a minor sum of salaries can opt for a simplified registration and administration procedure. Conditions are that the annual salary per employee is not more than CHF 20'520 (as per January 2009) and the total sum of salaries for all employees does not exceed CHF 54'720 (as per January 2009). The simplified procedure applies to all insurances for old-age, invalidity, temporary loss of income, unemployment insurance and family allowances (the compulsory accident insurance has to be administered separately). Furthermore, the employee's salary is subject to taxes at the source which also is handled by the employer.

10. Compensation for Temporary Loss of Income (EO)

The purpose of this insurance is to partially cover the loss of income due to military and civil defense service as well as maternity. Since July 1, 2005 all women giving birth whether employed or self-employed are entitled to receive maternity benefits, if they meet the legal requirements. For 14 weeks respectively 98 days after having given birth they will receive 80 % of their average income before the birth, but no more than CHF 196 per day (as per January 2009). Employers may grant longer or higher maternity leave payments on a voluntary basis.

Contributions are calculated at 0.3% of gross earned income (no upper limit) of which 50% is borne by each the employee and the employer.

Employers are required to withhold the amount due by both the employee and the employer on a monthly basis and transfer the total amount to the competent cantonal social security authority.

11. Occupational Benefit Plan concerning old-age, survivors and invalidity (BVG) – 2nd pillar

While both the old-age and survivors' insurance and the invalidity insurance are designed to cover only the basic needs of the insurant, the purpose of the occupational benefit plan is – together with the benefits of the 1st pillar – to enable them to maintain their previous standard of living in an appropriate manner.

The occupational benefit plan scheme is compulsory for employees working in Switzerland who receive from the same employer an annual income of more than CHF 20'520 (as per 2009). Optional insurance exists for employed and self-employed persons who are not subject to compulsory insurance (e.g. employees who do not receive an annual income of CHF 20'520 from one single employer, but as a total from several employers).

The insurance covers the risks invalidity and death (over the age of 17) and old-age (over the age of 25).

Contributions to the occupational benefit plan vary depending on a series of factors including 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 upper limits for contributions, but many employers subscribe to pension schemes providing additional coverage.

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

Most pension funds establish detailed regulations for the employers and persons affiliated.

12. Accident and occupational disease insurance (UVG)

The compulsory accident insurance is an insurance covering the financial consequences of occupational and non-occupational accidents as well as occupational diseases. Compulsory insured are all employed persons working in Switzerland. Employees working less than 8 hours per week are only insured against occupational accidents and occupational diseases.

Accident is defined as any unexpected and involuntary injury resulting from an extraordinary external cause. The insurance benefits are payments in cash (e.g. daily allowances of 80 % of the insured salary) as well as payments in kind (e.g. medical treatment, auxiliary equipment).

Contributions to accident insurance vary depending on type of work being performed (degree of accident risk), sex and age of the employee.

On average, contributions for administrative personnel amount to 1.5 % of gross income for each occupational and non-occupational insurance. Occupational insurance premiums are borne by the employer whereas non-occupational insurance premiums are usually withheld only from the employee's salary. The maximum insured salary is currently CHF 126,000 per year.

13. Qualified Fiscally Privileged Pension Schemes - 3rd pillar

A qualified fiscally privileged pension scheme (3rd pillar) provides an employee with additional possibilities for retirement provision on a voluntary basis. Those individual provident measures are provided by banks and private insurance institutions. The annual amount of the contributions is determined by the insured person. Up to CHF 6'566 (as per January 2009), contributions to the 3rd pillar 3a can be deducted from the taxable income of the employee.

The conditions regarding entitlement, benefits, etc. depend on the bank or insurance company product chosen by the employee.

14. Sickness Insurance (KVG)

Sickness insurance is compulsory for every person living in Switzerland and must be arranged individually. There are no mandatory contributions by the employer.

The insurance covers the risks sickness, maternity and accident to the extent that there is no other insurance coverage. Sickness is any impairment to health which is not the result of an accident and which requires medical treatment and/or results in incapacity to work.

15. Unemployment insurance (ALV)

Unemployment insurance provides benefits in the case of loss of employment, reduced working hours, lack of work due to bad weather conditions and insolvency of the employer.

All employed persons working in Switzerland are subject to compulsory unemployment insurance.

Contributions to unemployment insurance are based on the gross income and amount to 2 % thereof. However, contrary to old-age and survivors' and invalidity insurance, the insured salary is limited to CHF 126,000 per year (as per January 2009).

Half of these amounts are charged to the employee from whose salary they are deducted. The other half of the contribution is paid by the employer.

Unoccupied persons receive daily allowances corresponding to 70-80% of their last insured income of maximal CHF 126'000 per year.

16. Family allowances (FAK)

Families receive an allowance for each child, unless the parents are not working or self-employed. If both parents are working, only one of the parents is entitled to family allowances (no double payment).

The entitlement to family allowances begins on the first day of the month in which a child is born and ends in most cantons when the child reaches the age of 16 (or 25 for children under going education). Family allowances vary from canton to canton. With the new Federal Law on Family Allowances, effective January 1, 2009, the nationwide minimum allowances amount of CHF 200 – 250 per child.

The contributions are entirely made by the employer.

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

Daily allowance insurance in case of sickness is voluntary. The contributions depend on the scope of benefits. This form of insurance covers a certain percentage of the salary in the event of inability to work due to illness,

maternity and/or accident. Premiums may be equally divided between 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 agreement Switzerland-EU on social insurance

The Agreement on Free Movements of Persons between Switzerland and the EU/EFTA has taken effect on June 1st, 2002. It contains provisions on co-ordination of social security between Switzerland and the EU/EFTA. These provisions stipulate which social insurance system employed persons are subject to. 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 employed in an EU/EFTA Member State or Switzerland is subject to social security only in one country. If he/she is simultaneously employed in more than one country and one of the working countries is also his/her residence country, he/she is in principle covered by the system of the country of residence.

Temporarily seconded persons remain subject to their home country in social insurance scheme for 12 months. This period can be extended for another 12 months with the consent of the foreign authority. If the secondment lasts more than 24 months, the responsible social security authorities of the home and the host country can agree on a special social security agreement for the seconded employee for a maximum of 5 to 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 exist 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 rates are 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 as 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 until the date of departure.

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 borne by a permanent establishment 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. The same scenario applies in your departure year.

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 3a), 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 federal, 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. However, it also has some characteristics of a partnership (direct management and control by the partners). The details of the partners (in particular names and residences) of a limited liability company are published with the Commercial Register. The limited liability company is a legal entity with a capital of at least CHF 20,000. The capital must be fully paid in, in cash or in kind, and disclosed in the articles of incorporation at the time the company is founded. The voting right of the partners is determined according to the par value of their company shares, unless the articles of incorporation provide otherwise. The partners are not personally liable for any debts of the company. The assignment of company shares as well as the obligation to assign shall be in writing. The transfer of shares requires the approval of at least two-third of the represented company shares votes and the absolute majority of the entire stated capital to which the right to vote is attached.

The transfer (including the new owners) will be published in the respective Commercial Register and entered in the share register of the company. 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 incorporate 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 may be founded by one or more natural persons or legal entities or other commercial companies.

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).

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.

The corporate name has to include the word “Aktiengesellschaft” or its abbreviation “AG”. If the name includes a geographic term or a designation of a similar nature (for example “European”, “International”, “Swiss”, “Switzerland”, etc.) the respective guidelines issued by the Swiss Federal Commercial Register need to be considered.

The corporation becomes a legal entity upon registration with the competent 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. The board members must not be shareholders. However, at least one person having signatory powers, either a member of the board of directors or a executive manger, has to be domiciled in Switzerland.

The members of the board of directors and the management 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

Generally, the books of a Swiss company need to be audited by a registered auditor. Based on the annual turnover, the total assets, the number of employees as well as other factors, the auditor has to carry out an “Ordinary Audit” or a “Limited Statutory Examination”. Small and medium sized companies may waive the requirement to carry out an audit if the following conditions are met:

- a. < balance sheet total of CHF 10 million,
- b. < turnover of CHF 20 million,
- c. < average annual number of 10 full-time employees.

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 / Place of jurisdiction

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. 1 SIPL, the law of the state where the employee usually performs his duties is applicable. If the employee usually performs his duties in several states, the law of the state in which the employer is domiciled is applicable according to article 121 para. 2 SIPL.

Furthermore, the contractual parties may agree that either the ordinary courts in Switzerland, at the employer's registered seat, 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. However, such a clause may not be validly agreed upon in advance since, from a Swiss point of view, the employee may not be deprived of the legal places of jurisdiction before the dispute has arisen.

b) Main issues to be considered according to Swiss laws 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 (i.e. collective labor agreements concluded between trade unions and employers' organisations). These rules and regulations are mainly stated in the private contract law (Art. 319 ff. Swiss Code of Obligations, CO) under the section „individual employment contract“ and the Swiss Labor Act.

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 that have been agreed upon between employer and employee. Even an orally concluded contract is legally valid and binding (but not recommended); anyway, in such case, the employer has to inform the employee in writing on certain essentials of the oral agreement if the employment relationship has been concluded for more than one month (article 330b CO).

d) Contents of the employment contract

The contract of employment should, amongst others, 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. Other important contents of the employment contract are, for example: the date of beginning and the duration of the employment relationship; place of employment; the notice period in case of an undetermined duration; salary (e.g. per hour, per month); bonus payments, if any, including conditions; working time (daily, weekly); holidays; insurances (e.g. daily allowance insurance in case of sickness, owed contributions); occupational benefit plan, etc.

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 labor agreements that are applicable.

f) Salary if the employee is unable to work

If the employee is unable to perform his/her work by no fault of his own and for reasons inherent to his/her person, such as sickness, accident, compliance with legal obligations (e.g. military service), etc., 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 for longer periods during the following years of service. These periods vary from place to place in Switzerland and are regulated in so called scales (scale of Berne, scale of Zurich and scale of Basle) As an example, please find below the periods foreseen by the scale of the canton of Berne (most common scale in Switzerland, also applicable for the cantons of Vaud and Geneva):

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

For the canton of Zurich, the scale of Zurich is applicable. A detailed list with the scales applicable can be provided by Ernst & Young.

g) Working time / Overtime

Basically, in Switzerland the legally fixed maximum working time is 45 hours a week for employees in industrial enterprises, office staff, technical personnel and other employees including sales assistants in large retail businesses, whereas a limit of 50 hours per week applies to all other employees. It is understood that the parties may agree on a lower working time. The typical weekly working time in most offices amounts to 42.5 hours, comprising five 8.5-hour days. Typical office working hours are 8 a.m. to 5.30 p.m. Factory hours often start at 7 a.m. For management executives, there are no legal working time limits to be mentioned.

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 has to work overtime – i.e. more than the contractual working time or more than the legal maximum –, the law provides for a compensation amounting to 125% of the base salary. Financial compensation may be replaced by free time of the same duration if the contractual parties agree upon in writing. Under certain conditions, the parties may by written agreement waive any substitution (i.e. financial compensation or free time) for contractual overtime as long as it does not exceed 45 / 50 hours a week.

h) Vacations

According to federal law, employees are entitled to at least four weeks of paid vacation p.a. Apprentices under the age of 20 are legally entitled to at least five weeks of vacation per year. The employer determines the date of the vacation but has to respect the employee's wishes to the extent they are reconcilable with the business concerns. At least two weeks of vacation have to be granted consecutively.

1st of August is the only Swiss national bank holiday. The cantons grant up to 8 additional public holidays (such as Easter, Christmas, 1st of January, etc.). Paid holidays may also be granted through collective labor agreements, or by each employer on a voluntary basis.

i) 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. If agreed so by the parties, also an employment agreement with a fixed duration may be terminated by giving prior notice. An employment of indefinite length may be terminated by each party by giving prior notice.

The legal notice periods are as follows, each time per the end of a month:

- First year of service: 1 month;
- Second up to the ninth year of service: 2 months;
- 10 years of service and more: 3 months.

These legal notice periods may be altered by mutual written agreement, whereas they may not be reduced below one month. It is not possible to provide for different notice periods for the employer and the employee.

Severance payments are only legally owed if the employee is over 50 years old with more than 20 years of service and without a sufficient pension plan (2nd pillar). As affiliation to pension funds (2nd pillar) is compulsory for the majority of employees since 1984, legal severance payments are seldom in practice.

Termination of the employment agreement is covered by contractual freedom. Therefore, both parties are allowed to terminate the employment agreement at any time by respecting the legal or contractual notice period. Both parties are protected against abusive dismissal. Giving notice for a cause not lying in the

employment relationship is generally considered as abusive. The courts may accord penalties up to six monthly salaries in case of abusive dismissal, but in general there is no entitlement for a re-instatement.

Termination with immediate effect is admissible for just cause. Nevertheless, Swiss courts are very restrictive and only accept exceptionally terminations without a notice period for just cause. But as, in general, notice periods are of a short length and the principle of contractual freedom applies, Swiss employment law is, also concerning the termination of employment relationships, very liberal compared to other legislations.

j) Competition ban

During the employment relationship, the employee is not allowed to compete against the employer (art. 321a para. 3 CO). The parties may agree that the employee has to refrain from engaging in any competitive activity also after termination of the employment relationship, in particular neither to operate a business for his/her own account which competes against the employer's business, nor to work for or participate in such a business. Such agreement, however, is only valid in written form.

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 impair the employer's business. The duration, territory and object of the competition ban have to be limited adequately to be valid and enforceable. Liquidated damages may be agreed upon in written form.

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 (“safe-haven” rates) 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 (other quotas may be allowed on cantonal/communal level in several cantons). 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 26.86%. The effective pre-tax rate is 21.17%.

Special tax relief may nevertheless be granted which can significantly reduce the rate of taxation (see paragraph 5 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. Such tax holidays are available in certain regions only.

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. The 20% quota (as regards dividend income as well as capital gains) will be reduced to 10% as from January 1, 2011.

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.

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 investments.

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) Auxiliary 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 in the range of 5% to 10% of the total overhead expenses of the Swiss "management" or "service" company (basically the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations has to be

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

f) Principal companies

Federal guidelines provide a special federal tax regime for principal companies: A Swiss company within an international group is treated as a principal company if it assumes risks and responsibilities for certain activities, including the following: purchasing; planning of research and development (R&D), manufacturing and distribution; development of marketing strategies; logistics; treasury; finance; and administration. In Structures involving principal companies, manufacturing is typically performed outside of Switzerland by group companies or third parties on a contract manufacturing or cost-plus (toll) basis on the instruction, and for the account, of the principal. Sales are made exclusively in the name of international group distribution companies for the account of the principal company. These distribution companies must act exclusively as agents with the authority to conclude contracts on behalf of the principal company (commissionaires) or as limited-risk (stripped-buy/sell) distributors because of the related risks borne by the principal.

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/communal tax purposes is calculated on the basis of the net income as determined by the financial statements from which a notional interest (calculated based on the deemed debt of 10/11) is deducted.

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 on the level 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. On dividend payments made to qualifying non-Swiss shareholders, Swiss withholding tax may be reduced (up to 0%) depending on the treaty concluded between Switzerland and the state of the shareholder (refund of withholding taxes paid or application of notification procedure).

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. If certain conditions are met, the Swiss entity distributing the dividend can apply the notification procedure instead of paying the tax and claiming the refund.

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 food, 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 incorporated companies, and 0.3% on securities issued by non-Swiss incorporated 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 eighty 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 rate can be reduced to 0% 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 possible to obtain relief up to 0% 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. In 1999 and 2001 the 1962 Abuse Decree was relaxed substantially. As a result, the following Swiss companies are no longer subject to the restrictions imposed in 1962:

- Companies that are engaged in an active business;
- Holding companies;

- Companies of which at least 50% of their shares (by voting rights and nominal value) is quoted and regularly traded on a Swiss stock exchange or on a foreign stock exchange with similar or comparable regulations and standards;
- Companies of which at least 50% of their shares (by voting rights and nominal value) is held directly by a Swiss company and the Swiss company is quoted and regularly traded on a Swiss stock exchange or on a foreign stock exchange with similar or comparable regulations and standards.

In addition, companies not listed above are no longer required to make mandatory distributions of 25% of their passive income.

If a company that remains subject to the anti-abuse decree derives dividends, interest or royalties from sources in a country having a double tax treaty with Switzerland, it must have taxable earnings equal to at least 50% of such income in order to benefit from the treaty.

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 parent 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 (based on the so-called “old reserves practice”).

It should also be noted that Switzerland has a 0% treaty on dividend distribution made by Swiss companies to majority shareholders in other jurisdictions including Austria, Denmark, Luxembourg, Finland, France, Germany, Ireland, Norway, Spain, Sweden and Venezuela. Furthermore, the Switzerland-EU agreement can be applied on dividend distributions made by Swiss companies to EU resident recipients. The application of this agreement results in a 0% rate as well (if certain conditions are met).

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 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 (as long as the structure is not considered abusive).
- 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 auxiliary 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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