



# Doing Business in Switzerland



Nexia Switzerland Ltd.



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This review of business principles within Switzerland has been designed for use by both NEXIA staff and clients. Additional copies may be obtained from the Swiss members listed on page 44. For more information, please contact Nexia Switzerland Ltd. or the Nexia International Secretariat:

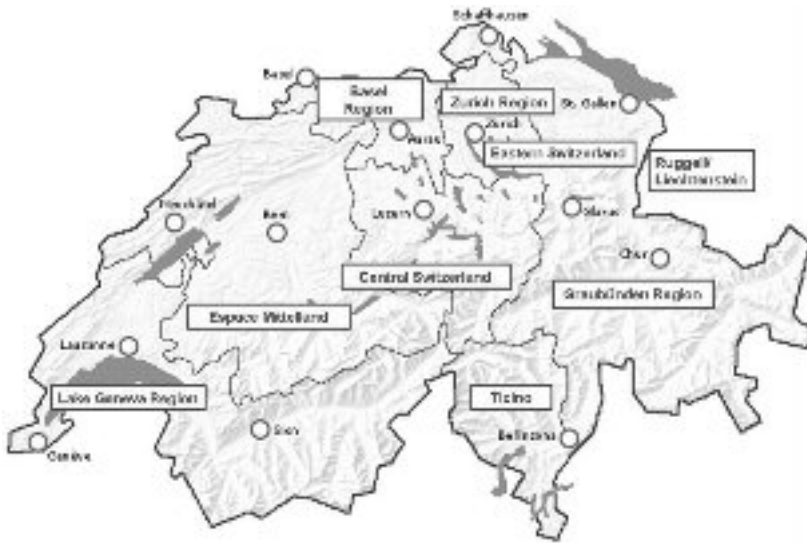
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## MAP OF SWITZERLAND



## SWITZERLAND IN THE HEART OF EUROPE



## **PREFACE**

This booklet summarises basic information and aims to provide clients with an initial overview of the Swiss business environment, such as the structures of the legal, financial, tax and employment requirements. However, we would recommend that clients seek professional advice prior to engaging in business in Switzerland.

Whatever a client's needs may be, dependable information from which to make accurate decisions is essential. Guidelines as to trade and tax legislation, shelf life regulation, quality and pricing requirements, customer care services, freight rates, duties and VAT legislation can be provided. At a later date, NEXIA's assistance can help to ensure smoother paper flow with the authorities, clarification of organisational structure, or guidance with auditing and tax matters.

Our partner firm in Switzerland, NSL (NEXIA) AUDIT & CONSULTING S.A., offers a full range of advisory services including company establishment, accounting, taxation, management consulting and also assistance in all legal matters through their lawyers. Staff are available to assist you with most aspects of establishing new ventures all over Switzerland.

The authors cannot be held accountable for results related to the contents of this manual.



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## **PART I: GENERAL BUSINESS AND LEGAL ENVIRONMENT**

### **1 Federal State of Switzerland - General Information about the Country**

Located at the heart of Europe, with Germany to the north, Austria and the Principality of Liechtenstein to the east, Italy to the south and France to the west, Switzerland combines many European cultures with its German, French, Italian and Romansh speaking regions. Although it is the smallest Federal state within Europe (41,285 km<sup>2</sup>), its division into 26 cantons and different languages makes it one of the most complex. With a population of approx. 7.6 m (averaging 184 residents/km<sup>2</sup>) the cantons vary greatly in size and population density. For example, Zurich, with a total area of 1,728.8 km<sup>2</sup>, has over 1.3 million inhabitants whilst the (by population) smallest canton Appenzell Innerrhoden, with a total area of 172.5 km<sup>2</sup>, has approximately 15,300 residents.

Since it has almost no mineral resources and a restricted surface area, Switzerland depends to a large extent on foreign trade. Its small domestic market is yet another factor which has encouraged Swiss manufacturers to invest in research and development and to enter foreign markets.

Roughly speaking, Switzerland imports bulky raw materials and exports high quality finished goods. Thus the value of exported goods (CHF 206,252 m) in 2007 exceeded the imported goods (CHF 193,216 m) by approx. CHF 13,036 millions.

The most important trading partners of Switzerland are Germany, Italy, France, the United States as well as Great Britain.

## **2 Switzerland – a Location to do Business**

Naturally, geographical and economic elements considerably influence where a company might locate. This overview shows the more important reasons for Switzerland being an optimal location. For example, Swiss companies benefit from an environment which facilitates both national and international activities. In addition, the Swiss government has created an encouraging and attractive investment climate for foreign portfolio investments. Although certified by independent studies such as The Economic Intelligence Unit, The Investment Monitor of Ernst & Young as well as the World Competitiveness Yearbook of IMD (International Institute for Management Development), the most convincing proof is provided by the numerous international companies which have elected domicile here.

Switzerland has one of the most liberal and competitive economies of the world. Long-term decisions, liberal legislation, free-market competition as well as cooperative authorities favour the establishment of companies, branches or research centres. It is ranked at the top by internationally recognised institutions as a privileged European business location for its legal and long term stability, free-market competitiveness, property protection as well as minimal bureaucracy.

Switzerland is a country with an efficient, confidential, and sophisticated banking system. As one of the leading and most efficient financial centres, Switzerland offers, in addition to its local banks (the most important branch) services such as foreign exchange, precious metal trading, asset management and issuing operations. Its famous bank client confidentiality is one of the most complex which guarantees discretion by both banks and their employees and gives national and international investors maximum protection (although there is no such thing as a completely anonymous bank account). In addition, its comparatively low interest rates are a further attraction.

Operating in a free enterprise economy, a business can grow and develop, since the economy is based on the principles of free enterprise as guaranteed by the Swiss Constitution since 1874. Switzerland is also one of the leading locations for operations in High Technology. Numerous successful multinational firms have chosen Switzerland for their R & D (Research and Development) and manufacture, as well as the ideal location for coverage of the European market. Based on the last OECD report, Swiss innovation performance is rated overall as being the best in the world and also according to the World Economic Forum's latest Global Competitiveness Report (2007-2008), Switzerland holds first place for innovation.

Furthermore, its advanced educational system has produced a highly trained labour force – an additional incentive for foreign executives to choose Switzerland. Well developed protection of intellectual property is yet another factor of interest to corporations as it enables them to obtain, with only one application, worldwide protection.

## 2.1 Economic Facts

In 2007, the Gross Domestic Product amounted to a nominal CHF 512'142 millions. Exports were CHF 207'075 millions, while imports were CHF 197,662 millions. Approximately 62% of Swiss exports head for the European Union.

<b>Economic data</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>
GDP per head (CHF)	59,112	60,554	61,742	64,444
GDP (% change pa)	0.8	3.1	2.6	5.2
Government consumption (% of GDP)	11.93	11.75	11.7	11.2
Average consumer price index	0.6	0.8	1.2	1.1
Public debt (% of GDP)	55.0	54.6	52.3	47.4
Labour costs per hour (CHF)	50.95	51.59	51.59	53.59
Recorded unemployment (%)	3.7	3.9	3.8	3.3

Labour costs per hour:  
For production workers. Includes pay for time worked, other direct pay (e.g. holiday pay), employer expenditures on legally required insurance programmes and other labour taxes.

## 2.2 Purchasing Power

The consumer price index, based on an international product mix (COICOP = Classification of Individual Consumption by Purpose) measures price changes and purchasing power within different countries. This index facilitates international comparisons of the purchasing power as a measure of the local economy. In 2005, the Swiss consumer price index was adjusted and has since increased by 1.8% through 2007.

In Switzerland there are no currency or exchange control restrictions. The Swiss franc (a very stable currency) is one of the world's strongest currencies and was exchanged at the following rates at December 2007:

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USD	1	equal to CHF	1.1321
EUR	1	equal to CHF	1.6553
JPY	100	equal to CHF	1.0134

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### 2.3 Labour Force

3.85% of the labour force is in agriculture (primary sector), 23.8% in industry (secondary sector) and 72.35% in services (tertiary sector). In equal measure the secondary (industry) and tertiary sectors (IT, credit and insurance branches) are the source of most recent employment increases.

According to the latest study of the BERI-Institute (Quality of Workforce Index – QWI), Switzerland ranks fourth among the world's leading economies in the productivity of its workforce, just behind Singapore, USA and Taiwan. Considered as a country with high wages as a result of better education, international studies have shown a high level of motivation within its workforce. Within Switzerland's predominant structure of small and medium size companies, employees are loyal and dedicated to the objectives of their employers and therefore show higher levels of productivity.

Considered as a country with a lower level of overall regulation, labour laws are fewer than those generally found within the EU. The law is interpreted quite liberally and possibilities for individual arrangements exist. The labour laws - the Swiss Code of Obligations and Collective Employment Agreements - govern employer and employee contracts. Wages are either defined individually between the two parties or within a framework of collective agreements. Regulations in Switzerland are generally interpreted in conjunction with rights of employees along with the influence of labour unions. Ultimately however, the rights of employee representation in Switzerland lead to a high level of consensus within enterprises. Thus, strikes are an extreme rarity.

In 2004, unemployment peaked at 4%, but decreased to 2.8% by the end of 2007. According to the SECO, the unemployment rate will decrease even further to 2.5% during 2008.

Compared to the EU with 7.1% or Germany with 8.4% the unemployment rate of Switzerland is very low.

Any wage earner, whether employed or independent, is subject, in addition to income tax, to social security taxes (i.e. old age pension, disability insurance as well as unemployment insurance). The latter, except for unemployment insurance, are based upon total income, whether earned or capital based.

## **2.4 Deregulation**

Deregulation refers to the privatisation of state owned enterprises. In Switzerland, this movement has resulted in a rise in efficiency, innovation and reductions in prices. However, some sectors (post, railway and electricity) remain in government hands, as some public services could have been placed in jeopardy.

## **2.5 Political Structure**

The Swiss Confederation, whose capital is in Bern, was formed in 1291, while its constitution was finalised in 1848. This divided the political structure into two parts: the Legislature and the Executive. The Legislature is composed of the Council of Cantons (46 members) and the National Council (200 members). The Executive consists of the Federal Council where its seven members serve terms of four years.

The four main political parties are the CVP: the "Christlichdemokratische Volkspartei" (Christian Democratic Party), FDP: the "Freisinnig-Demokratische Partei" (Liberal Democratic Party), SP: the "Sozialdemokratische Partei" (Social Democratic Party) and SVP: the "Schweizerische Volkspartei" (Swiss People's Party). Until 2007 the allocation of seats within the Federal Council has been 1 CVP, 2 FDP, 2 SP and 2 SVP. In June 2008 however the SVP became separated into two factions: the BDP ("Bürgerlich-Demokratische Partei" [Civil Democratic Party]) and the old SVP. Thus the allocation of the seats in the Federal Council has changed to 1 CVP, 2 FDP, 2 SP and 2 BDP.

Furthermore, constitutional initiatives and referendums, at a municipal, cantonal or federal level enable citizens to participate more directly in the political direction and decision-making of Switzerland.

## **2.6 EU Integration Policy in Switzerland**

Since 1945, the government has developed closer economic links with Europe in order to increase levels of competition. The creation of the EU is of great importance to Switzerland, as trade with the EU represents about 33% of the GDP, with 62% of Swiss exports going to the EU. This means that about one third of the GDP is generated in the EU. The European Union is therefore by far the most important trading partner of Switzerland.

In international trade, Switzerland is closely networked and has currently 16 free trade agreements in addition to the Convention establishing the European Free Trade Association (EFTA) and the Free Trade Agreement with the European Union (EU) of 1972.

### 3 Social Security System

The Swiss social security system is based on a three pillar system:

**Pillar 1:** The first pillar consists of old-age and dependent survivors' insurance, invalidity insurance and a pension intended to cover the employee's basic living costs upon retirement. The old-age and dependent survivors' insurance contributions are obligatory for all salaried employees (incl. self-employed individuals).

**Pillar 2:** This includes the same benefits as pillar 1 and should allow pensioners to maintain their standard of living to which they are accustomed. These contributions are only obligatory for salaried workers.

**Pillar 3:** This pillar represents an additional savings plan for individuals to meet their further retirement needs. These contributions are voluntarily and offer tax benefits to individuals.

The Swiss Social Security System is composed of:

- Old age and dependent survivors' insurance
- Disability insurance
- Military ordinance
- Mandatory pension plans
- Unemployment insurance
- Accident insurance
- Health insurance
- Family benefits
- Maternity insurance (mandatory in Switzerland since 2005)

#### 3.1 Social Security Rates

Rates and definition vary depending on whether you are an employee, an independent or an expatriate, as outlined below.

##### 3.1.1 Employer and Employee

Employers are fully accountable for the employee's share of social security payments. However, this only applies to companies with permanent domicile in Switzerland. Non-resident companies are not liable for social security. Should they transfer employees from a

foreign country, these employees are liable for social security taxes just as the self-employed are.

These taxes, 50% due by employer and 50% due by employee are based on gross salary and are deducted from the employee's salary prior to its payment. Rates for 2008 are:

<b>Insurance</b>	<b>Employer</b>	<b>Employee</b>	<b>Total</b>
Old-age/survivors' pension	4.2%	4.2%	8.4%
Disability insurance	0.7%	0.7%	1.4%
Military income loss compensation	0.15%	0.15%	0.3%
<b>Total old-age and dependent survivor insurance</b>	<b>5.05%</b>	<b>5.05%</b>	<b>10.1%</b>
Unemployment insurance (up to a maximum salary in the amount of CHF 126,000)	1%	1%	2%
Pension fund	ca. 5-8%	ca. 5-8%	10-16%
Accident insurance			
▪ Occupational accidents	varies		
▪ Non-occupational accidents		1% - 2%	1-2%
Health insurance	Not liable	Individual	
Maternity insurance	0.13%	0.13%	0.26%
Family subsidies	1.5%-3%	Not liable	1.5-3%
<b>Total approximate contributions</b>			<b>25-34%</b>

The Health Insurance Law (KVG) regulates the health care insurance coverage. Although health insurance is compulsory for the whole population of Switzerland, employers are not responsible for providing coverage.

Individuals have the obligation to be covered by Swiss health care insurance, if they:

- have their residence in Switzerland, or
- have a work permit which is valid for at least three months in Switzerland, or
- are performing a dependent activity in Switzerland with a permit valid for less than three months, and are not covered in Switzerland by similar insurance benefits abroad.

The premiums vary between *150 and 300 Swiss francs per person/per month* depending on the insurance provider and the place of abode. Individuals may be exempt from the obligation to be insured:

- if they are subject to a compulsory health care insurance abroad, that grants coverage in Switzerland similar to the coverage foreseen by the Swiss law, or
- if the individuals are exempt from Swiss social security obligations based on a social security agreement between Switzerland and the respective country, provided their employer guarantees that health care coverage similar to the coverage foreseen by Swiss law is granted to them during their assignment.

### 3.1.2 Self-Employed People

Entrepreneurs classified as self-employed are not subject to all the previously mentioned social security costs, and their rates are as follows:

<b>Insurance</b>	<b>Contribution</b>	<b>Total</b>
Old-age/survivors' pension	7.8%	7.8%
Disability insurance	1.4%	9.2%
Military income loss compensation	0.3%	9.5% <sup>1)</sup>
Unemployment insurance	not applicable	
Pension fund	voluntary	
Accident insurance	voluntary	
Health insurance	Individual <sup>2)</sup>	

1) The rates (aggregate of the 3 first-mentioned insurance schemes) are progressive between 5.116% and 9.013% for income up to CHF 53,100 per year and 9.5% for income in the amount of 53,000 and above.

2) All inhabitants of Switzerland are obliged to have health insurance. Average contributions for adults are: CHF 150 to CHF 300 per person and month (see chapter 3.1.1)

## **3.2 Expatriates working in Switzerland**

Specific rules apply to expatriates working in Switzerland for limited periods of time. Clients should first check whether a social security agreement exists between Switzerland and their home country.

### **3.2.1 Expatriates from Treaty Partner Countries**

Employees from these countries are generally exempt from social security payments for distinct periods of time according to the relevant agreement (from 20 to 60 months). Any negotiations with Swiss authorities require official documentation from the country of origin.

Exemptions from social security generally include:

- Old-age dependent survivor insurance
- Disability insurance
- Accident insurance
- Health insurance (differs from country to country / may vary depending on agreement)

### **3.2.2 Expatriates from EU and EFTA Member States**

Specific legislation applies to employees from EU member states as defined in the Bilateral Agreements I (valid as of July 1, 2002), which grant employees similar rights to those within the EU.

### **3.2.3 Expatriates from Non-Treaty Partner States**

If no social security agreement exists between Switzerland and the country of origin, expatriates are liable for Swiss social security costs. Under certain conditions, expatriates may apply for exemptions, particularly if they already pay these taxes in their home country. This differs for expatriates of a non-resident employer (defined in "ANOBAG") who are accountable for Swiss taxes just as the self-employed are. Expatriates are not covered by Swiss accident insurance during their first year of residence. This non-coverage can be extended (up to 6 years) if they are covered by comparable insurance abroad. Exemption from Swiss health insurance may also be granted if the expatriate has a comparable health plan abroad.

#### **4 Work Permits for the population of EU and EFTA Members States**

As strict regulations apply to granting work permits, these can be difficult to obtain even for high level executives, skilled technicians or specialists. Some cantons, however, are more lenient than others.

All non-Swiss nationals wishing to come to Switzerland for the purpose of employment must have a valid passport. In addition, the Swiss employer needs to have applied for and received agreement to the issue of a work and residence permit before the arrival of the non-Swiss national in Switzerland. This document is obtained from the immigration police of the canton in which the employer is situated. There are different types of work permits:

**Permit G:** this permit is for individuals who work in Switzerland and live in one of Switzerland's neighbouring countries such as Liechtenstein, France, Germany or Austria.

**Permit L:** this is a short-term work permit for trainees or employees engaged for a short period of time (valid up to four months, but less than one year) and are relatively easy to obtain.

**Permit B:** this is the most common type of work permit. It is a long-term work permit that is granted for employees who are part of an inter-company transfer, important internal projects, or who possess skills not available on the local market (e.g. expatriates).

**Permit C:** after a period of time (as defined by the country of origin), foreign nationals are allowed to apply for a renewable, long-term permit which grants similar legal status to that of a Swiss citizen, except for voting rights and military service.

Non-compliance with the laws and regulations on employment of foreigners carries heavy penalties. Moreover, employees may be expelled and employers left unable to obtain future work permits.

## **PART II: SETTING UP A BUSINESS**

### **5 Forms of Business Structure**

Laws regulating companies are part of the Swiss Code of Obligations. The following section only refers to the most common business structures.

#### **5.1 Sole Proprietorship**

This type of structure is commonly used for small ventures. As the owner is personally liable (without limitation), it is not a legal entity. If it is managed in accordance with good commercial practices and has a gross income of more than CHF 100,000 p.a., it only requires registration in the Commercial Register. The owner himself and not the company is subject to taxation.

#### **5.2 Ordinary Partnership**

Used for short term or specific projects, the ordinary partnership is a contract of partnership between two or more partners. A loose structure, it is not a legal entity so the partners are personally liable (joint and several liability) for their activities. Each partner is subject to taxation rather than the partnership itself.

#### **5.3 General Partnership**

To form a general partnership, at least two individuals enter into a contract of association for the operation of an enterprise based upon good commercial principles. The general partnership has a company name which is registered in the Commercial Register. This business organisation does not have its own legal identity, although it can acquire rights, incur liabilities, take legal action and be sued. Liability for debts is not limited to the capital of the partnership but extends to the partners' private assets. General partnership can therefore only be set up by individuals and not by corporations.

#### **5.4 Limited Partnership**

Limited partnership has two kinds of partners. One must be liable for the business without any limitation, while the other's accountability can be restricted to his investment. Unlimited liability partners can only be individuals, whereas those with limited liability may be corporate bodies. Details as to rights and duties are identical as to those described under "General Partnership".

## **5.5 Limited Liability Company**

A limited liability company is a business organisation formed by one or more individuals or legal entities i.e. companies.

It is a legal entity with a registered capital of at least CHF 20,000, whereas the minimum par value of a share is CHF 100 (nominal value). For each shareholder the name, place of residence/domicile, place of origin/nationality as well as the number and the nominal value of the corporate shares is to be registered in the Commercial Register. The registered capital is to be paid in full. While management and representation of the company may be transferred to third parties (individuals), at least one of the managing officers must be domiciled in Switzerland. All other partners and managers may also reside abroad.

## **5.6 Corporation**

Corporations are the most common type of companies in Switzerland. Foreign investors especially choose corporations as a vehicle for their projects. The corporation is a company whose capital is defined in advance and which is divided into shares. The corporation is only liable for debts as limited by the assets of the company. The ease of transfer of shares makes it a very flexible form of business organisation. To emphasise the particular significance of this type of entity, regulations regarding corporations are described below:

### **5.6.1 Company Name**

As a company's name is protected by law, it must be distinct from those already formed and registered. Furthermore the name should not be misleading, for example as to the company's commercial activity. National, regional or territorial designation can only be used if permitted by the Federal Commercial Register. However, the name must include an indication of the legal form of the company. These restrictions aside, the name is otherwise a matter of free choice. It is, however, advisable to check the intended name with the authorities before the corporation is actually set up. The existing company names can be verified on the Federal Commercial Register website <http://www.zefix.admin.ch>.

### **5.6.2 Share Capital and Shares**

The corporation is a legal entity with a minimum registered capital of CHF 100,000. At least 20%, but not less than CHF 50,000 has to be paid in (in cash or in kind) prior to its incorporation.

The corporation's capital is divided into shares of which the nominal value must be no lower than CHF 0.01. Two different kinds of shares can be issued: registered or bearer shares, the latter are easier to transfer, but have to be fully paid up. For registered shares, the company must maintain a share ledger. The transfer of registered shares must be made within prevailing regulations. Non-voting shares or participation certificates may also be issued.

In order to establish a corporation, at least one shareholder is necessary, in which legal entities may also be included as shareholders.

### **5.6.3 Domicile**

The corporation's domicile is a matter of free choice. However, difference of domicile between that of the management and that of the corporation can influence fiscal matters. As a general rule, the residence of management defines the focus of tax liability and not the company's domicile.

### **5.6.4 Incorporation and Costs**

The founder(s) of a corporation declare(s) in an authorised deed the formation of the corporation by adopting the articles of incorporation, and by appointing the board of directors. Each founder participates by subscribing his number of shares. Cash contributions have to be deposited for the exclusive use by the company at an institution subject to Swiss banking laws. Should investment be in kind or by acquisition of assets, founders must submit a written report from auditors, who will examine and approve the adequacy of the valuation of the assets brought in or taken over.

It is only upon entry in the Commercial Register that a corporation is considered a legal entity. Furthermore, share capital cannot be returned to shareholders unless the corporation is liquidated.

Costs of a company's creation are related to consultants' fees, the notarised deed and the Commercial Register as well as a notice published in the Swiss Official Gazette of Commerce. For example, the overall cost for a corporation with a share capital of CHF 100,000 is presently roughly CHF 10,000. However, should investment exceed CHF 1,000,000, a 1% stamp duty (issuing tax) on the issue of shares would be an additional cost.

Notarisation fee	approx. CHF 500-2,000
Fee for registration in Commercial Register	About CHF 800
Consulting fee	Between CHF 4,000 and CHF 7,000
Federal stamp duty 1%	Not until the share capital is CHF 1,000,000
Other costs (charges and so on)	Depending on complexity

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### **5.6.5 Corporate Bodies**

The corporation consists of at least three bodies: the shareholders' general meeting, the board of directors and the auditors.

#### **5.6.5.1 General meeting of the Shareholders**

The most important entity of a corporation is the shareholders' meeting at which they are able to participate in the following:

- changes in the articles of incorporation,

The approval of:

- the financial statements,
- the annual report,
- the consolidated statements of account and
- the distribution of profits (in particular the declaration of dividends).

This general meeting elects the board of directors and the auditors. All other matters are included which, by law or by the articles of incorporation, are reserved and voted on at the shareholders' general meeting.

The general meeting is called at least once a year and within six months following the ending of the financial year.

#### **5.6.5.2 Board of Directors**

This is an executive body, which is to be composed of one or more members. In general, the board of directors is able to make decisions on all matters which do not fall under the authority of the shareholders' general meeting. Some board of directors duties are fixed as

non-transferable and absolute. Although the board of directors' functions include a top management and supervisory function, it can be authorised, by the articles of incorporation, to fully or partially delegate management to individual members or third parties. This, however, must be in accordance with special organisational conditions.

#### **5.6.5.3 Auditors**

The auditors are appointed by the shareholders' general meeting. These have to be independent and qualified to verify that the accounts, the financial statements, the internal control system as well as the distribution of profits correspond to the law and to the articles of incorporation (cf. part IV).

At least one auditor must have his domicile, registered office, or a registered branch office in Switzerland.

## **6 Branch / Subsidiary**

Foreign companies can set up a branch or a subsidiary in Switzerland. A branch is an entity economically distinct from, but legally part of, the head office. One significant aspect of registering a branch in Switzerland is that local Swiss courts thus have jurisdiction over its affairs.

A subsidiary is a distinct legal entity in Switzerland, usually in the form of a corporation.

## PART III: TAXATION

### 7 Tax System

Switzerland is a confederation of 26 cantons with about 3,000 municipalities. Due to the federal structure of Switzerland there is no centralised tax system, with some taxes levied exclusively by federal authorities, whereas other taxes are concurrently levied at municipal, cantonal and federal levels. Although the tax rate at a federal level is fixed, the taxes at a cantonal level vary from one to another. (There is legislation under consideration whose aim is to eliminate these variations, as well as to reorganise the division of responsibilities and of revenues between the federal and cantonal administrations. But the schedule of such changes has yet to be determined.) Because significant differences presently exist in the rates of taxation at the cantonal level, the choice of canton is an important element in tax planning.

The following table gives an overview of all taxes in Switzerland:

<b>Federal Taxes</b>	<b>Cantonal Taxes</b>	<b>Municipal Taxes</b>
Individual income taxes	Individual income and net wealth taxes	Individual income and net wealth taxes
Corporate income taxes	Corporate income and capital taxes	Corporate income and capital taxes
	Real estate profit taxes	Real estate profit taxes
	Real estate taxes	Real estate taxes
	Real estate transfer taxes	Real estate transfer taxes
	Inheritance and gift taxes	Inheritance and gift taxes
	Motor vehicle taxes	Trade taxes
Withholding tax on passive income		
Value added tax and customs duties		
Stamp duties		
Military and civil service exemption tax		
Tobacco tax		

Beer tax

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Spirits tax

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Compared to international and OECD standards, Swiss tax rates are relatively low. The following chapters will inform clients about the most important taxes in Switzerland.

## **8 Cantonal and Municipal Taxes**

The calculation of taxes varies considerably from canton to canton, where taxes on profits are either based upon yield, or a proportional rate. On the other hand, tax on capital is almost proportionally based everywhere. The amount calculated according to these various formulas is the basic rate, which might be multiplied by an annual factor according to the financial needs of the cantons and communities. The overall tax burden for corporations varies from one canton to the other, but by international standards, taxes are low throughout Switzerland.

## **9 Tax Harmonisation**

In order to simplify the relatively complex tax system of Switzerland, the confederation enacted the Law for the Harmonisation of Direct Taxes of the Cantons and Municipalities (THL), which came into effect on January 1<sup>st</sup> 1993. This law provides for a harmonisation of tax liability, the period of assessment and the subject of taxation as well as procedures. The confederation, the cantons and the municipalities will continue to retain their own individual authority for establishing their tax rates, the multipliers and the tax free amounts or exemptions.

## **10 Taxation of Corporations**

Corporate taxpayers are resident under Swiss domestic tax laws if either their registered seat or management is effectively in Switzerland. Thus, a company registered in the UK, whose management is effectively domiciled in Switzerland, is considered a Swiss resident company for corporate income tax purposes. Resident companies are subject to worldwide taxation, excluding permanent establishments and real estate abroad (unilateral measure to avoid double taxation). In these cases the exemption with progression method applies.

Effective since January 1, 2001, most cantons introduced a so-called unilateral branch deduction. A resident company is deemed to have a branch outside Switzerland if it derives a

minimum 80% of its income abroad and if a minimum 80% of its activities are performed outside Switzerland. The existence of a specific entity abroad constituting a permanent establishment under foreign or international law is not required. A Swiss resident company primarily doing business abroad may thus pay cantonal / municipal taxes only on a small percentage (e.g. 10% - 20%) of total income in combination with no taxation abroad (because there is not really a permanent establishment in another country).

Resident companies are subject to:

- federal corporate income tax
- cantonal / municipal corporate income taxes
- cantonal / municipal capital taxes

Non-resident companies may be subject to Swiss corporate taxation if they:

- are partners in a business in Switzerland
- have a permanent establishment in Switzerland (a permanent establishment – according to domestic law – is a fixed place of business through which the business activity is wholly or partly carried out. It includes branches, factories, workshops, sales agencies, permanent representations, mines and other places of extraction of natural resources. This also includes a building, construction or installation site, if it lasts a minimum of 12 months).
- own Swiss real estate
- have claims secured by mortgage on Swiss real estate
- deal with Swiss real estate or act as a broker.

Non-resident companies are taxed only on defined Swiss income. Profits on a Swiss branch are apportioned only according to the direct method (i.e. not taking into account foreign profits or losses).

Non-resident companies deriving income from certain Swiss sources may be subject to withholding taxes.

## **10.1 Corporate Income Tax**

Corporate income tax is levied at a federal, cantonal and municipal level. The level of corporate income tax varies between the cantons. At present, Zug is considered as one of the best locations for trading and holding companies.

### **10.1.1 Taxable Base**

The calculation of taxable income is based on the financial results according to Swiss civil law. This profit and loss account may, however, be adjusted according to specific provisions in the tax laws. Specific rules apply to domiciliary and service companies.

In general, capital gains are also taxed as they are part of the profit and loss statement. At the municipal level as well as at the federal level, tax relief is granted with respect to qualifying dividends and capital gains (that is, no general relief is granted).

- A) Generally dividends received are taxable as ordinary income. However, under the participation exemption rules, if the recipient of the dividends owns at least 20% of the shares of the distributing corporation or if the recipient holds shares with a market value of at least CHF 2 million, the federal and municipal tax liability is reduced by a proportion of dividend income (as defined by the law) to the total net income. Adjustments will come into force on January 1<sup>st</sup> 2011.
  
- B) With the selling of the participation, the selling company may receive capital gains. Capital gains also qualify for the participation exemption, if the following requirements are satisfied: the seller of the participation has to own at least 20% of the shares of the sold corporation and the holding period of the participation had a duration of at least one year. According to the taxation of the dividends, the tax liability is reduced by a proportion of the capital gains (as defined by the law) to the total net income. Adjustments will come into force on January 1<sup>st</sup> 2011.

In certain cantons capital gains on real estate are levied separately (e.g. Zurich).

### **10.1.2 Tax Rates**

The federal corporate income tax rate is a flat 8.5%. Because tax payments are tax-deductible the effective federal corporate income tax rate is approximately 7.8%. The cantonal tax rates vary considerably between 14% and 35%. Generally, these are

progressive depending on various factors. The rates mentioned in the cantonal tax laws are usually subject to cantonal and municipal multipliers. The municipal tax on corporate income is calculated as a small proportion of cantonal tax. In Switzerland, all taxes due by corporate taxpayers are deductible.

As they are distinct from most other countries, Swiss tax rates should not be directly compared with foreign tax rates. For example, if the aggregate of all rates in Switzerland amounts to 30% (of which 8.5% is federal tax), the effective rate would only be about 23% (of which 7.8% is federal tax), compared to a country where taxes are not deductible.

The Swiss branch of a foreign company pays the same corporate income tax rates on profits, income and capital gains as would be paid by a Swiss-resident corporate entity.

### **10.2 Capital Tax**

This tax is based on the value of a corporate entity's net assets, normally equal to shareholders' net equity (paid-in capital, legal reserves and other retained earnings). A varying rate of 0.1 ‰ to 0.5 ‰ of the company's net equity is levied annually by the canton.

Foreign branches based in Switzerland are only assessed on the value of their Swiss assets for the purposes of this tax. Resident companies are not assessed on the value of any foreign-based real estate assets.

### **10.3 Withholding Tax**

The confederation has the exclusive right to levy withholding tax. It is based on certain passive incomes, such as:

- dividends (including liquidation proceeds);
- interest on bank loans and bonds;
- lottery prizes;
- and certain insurance payments (life insurance and private pensions).

The rate of withholding tax on dividends and interest is 35%. This tax is also applied to hidden profit distributions (e.g. if a company pays excessive fees/salaries/interest etc. to the shareholders or if the required levels of capitalisation are not met). The withholding tax has to be shifted to the shareholder. Thus, a company is only allowed to pay out 65% of gross dividends or interest. The other 35% must be remitted to the Federal Tax Administration.

Swiss residents can apply for a full refund of the withholding tax if certain conditions are met. Non-residents may get a partial refund in accordance with tax treaty provisions.

Profits repatriated abroad by the Swiss branch of a foreign company are not subject to withholding taxes irrespective of any double taxation treaty. Switzerland has double taxation treaties with about 80 countries. These determine the withholding tax rates in most cases, rather than the general rules as previously outlined.

#### **10.4 Stamp Duty**

The confederation has the exclusive right to levy this tax. The rates are as follows:

- 1% on the issue of shares where the value of the shares is over CHF 1,000,000, including cases in which shares are issued at a premium. Contributions from shareholders without any consideration as well as the transfer of a majority of shares of an “inactive” company are subject to 1% stamp tax. A Swiss branch of a foreign company is not subject to stamp tax.
- A rate of 0.15% on the transfer value of shares in Swiss resident companies and 0.3% on the transfer value of shares in non-resident companies, where the transfer is effected by a Swiss stockbroker, banker, investment fund manager, or other financial institutions (security dealers). The definition of security dealers is quite wide and includes any company which owns securities with a book value in excess of 10 million Swiss francs (holding companies) and all the intermediaries. The tax, divided between the buyer and the seller, is automatically deducted by the dealer.
- A rate of 0.12% per annum on the value of bonds issued, e.g. a 5-year bond would be taxed with a 0.6% stamp duty.
- A rate of 0.06% per annum on bank-issued medium term bonds and on the issue of financial instrument: e.g. a 5-year bond would be taxed with a 0.3% stamp duty and financial instrument would be taxed on a daily basis.
- A rate of 5% on an insurance premium or 2.5% tax on a life insurance premium paid in one lump sum.

Certain transactions, especially in the case of reorganisations are exempt from tax.

### 10.5 Value Added Tax

In 1995, Switzerland introduced a value added tax system which is consistent with the 6<sup>th</sup> Directive of the European Union (although Switzerland is not a member of the European Union). Since 1 January 2001, a new VAT tax law has been enacted. The VAT is only levied by the confederation.

To reduce administrative requirements, very small companies are exempt from VAT, as well as certain goods and services.

As the emphasis is on direct taxes, the standard VAT rate is a maximum of only 7.6%, making it the lowest VAT burden in Europe. The following chart gives an overview of other European countries (as per 1 July 2008):

<b>Country</b>	<b>VAT Rate</b>
Switzerland	7.6%
Germany	19.0%
United Kingdom	17.5%
Netherlands	19.0%
France	19.6%
Italy	20.0%
Ireland	21.0%
Belgium	21.0%

#### 10.5.1 Taxable Transactions

Subject to VAT are turnovers of taxable persons on:

- supplies of goods and services within Swiss territory;
- self-supply within Swiss territory;
- the receipt of services from enterprises with their domicile outside Swiss territory;
- and importation of goods.

### **10.5.2 Taxable Persons**

A “taxable person” is any business entity or individual that makes taxable supplies of goods or services in the course of a business in Switzerland. The legal form of the business has basically no influence on liability to VAT. In total per annum the VAT registration threshold in Switzerland is CHF 75,000 of taxable transactions. Furthermore any person in Switzerland who receives reverse charged services for more than CHF 10,000 a year is taxable. The threshold increases to CHF 250,000 for taxable persons whose payable annual net VAT does not exceed CHF 4,000.

### **10.5.3 VAT Rates**

- 7.6% standard rate
- 2.4% reduced rate (e.g. food, medicine, newspapers and books)
- 3.6% accommodation services

### **10.5.4 Input Tax**

VAT due or paid in respect of goods and services reused for taxable turnovers may be deducted. To reduce the administrative burden, companies with a taxable turnover not exceeding CHF 3 million and an annual tax liability of less than CHF 60,000 (calculated on the balance tax rate) can settle on the basis of balance tax rates.

### **10.5.5 Exempted and Tax-Free Turnovers**

Certain turnovers are exempted from VAT, e.g. hospital and medical care, education (school, courses, etc.), cultural activities (theatre, museum, libraries, etc.), insurance and reinsurance transactions, granting and negotiation of credits, transactions in shares and other securities, real estate transfers, letting and leasing of real estate. Input taxes in respect of exempted transactions are not deductible.

The export of goods and services abroad are tax-free within Switzerland. The input VAT can be deducted by presenting the export documents. Non-resident enterprises providing advertising services, services of consultants, trustees, debt-collection agencies, engineers, lawyers, auditors, translators, the supply of staff etc. are also relieved. A complete list of these tax-free services can be looked up in Art. 14 Para. 3 VAT law.

### **10.5.6 VAT Registration of Non-Resident Enterprises**

Non-resident enterprises are liable to Swiss VAT if their annual turnover in Switzerland exceeds CHF 75,000. However, they must appoint a fiscal representative in Switzerland. The registration has to contain:

- the date of commencement of Swiss business activities,
- the nature of Swiss activities
- and the expected annual turnover in Switzerland.

The expected tax due must be guaranteed, e.g. guarantee with a Swiss bank. The amount of the guarantee depends on the annual turnover, with a minimum CHF 5,000.00.

### **10.5.7 VAT Recovery**

Non-resident enterprises can recover Swiss VAT under certain conditions. The application must be filed annually, using standard forms, by June 30, following the end of the related calendar year. Repayments, usually within 6 months, are effected in Swiss francs to a Swiss bank account.

The company is obligated to appoint a fiscal representative in Switzerland. Important refund conditions are:

- the relevant goods and services are used for purposes that would have been subject to Swiss VAT if supplied in Switzerland,
- the company must not have a Swiss domicile,
- the company must be registered for VAT in its home country,
- and there has to be a reciprocal agreement between Switzerland and the home country (unless this country levies no VAT or has a non-refundable sales tax). Important countries with such an agreement are: USA, Canada, Japan, Israel, Saudi Arabia, as well as most of the European countries.

## **11 Holding Companies**

A holding company is limited to hold and manage investments and must not be involved in commercial activities.

Since the applicable conditions vary in each canton, professional advice should be considered before choosing a location.

### **11.1 Mixed Holding Companies**

Swiss companies with substantial participation benefit from tax relief as structured by the participation relief (at federal, cantonal and municipal levels). The participation relief reduces the amount of tax due (i.e. not as a reduction of the taxable base). The relief is calculated according to the proportion of the net income from qualifying participation to the company's total net income. The following income may qualify:

- dividends received from participations of a minimum 20% of the company's share capital or a minimum CHF 2 million (fair market value);
- capital gains realised on participations held for at least a year, if a minimum of 20% are sold.

Less restrictive conditions apply to venture capital companies.

### **11.2 Pure Holding Companies**

In addition, all cantons (but not at federal level) apply a holding privilege for pure holding companies. This results in a nearly complete exemption from tax at the cantonal and municipal level. In general the requirements are:

- holding activity (no active business), and
- either 2/3 of the total assets must consist of participations
- or 2/3 of the total income must consist of income from participations.

As a consequence, qualifying pure holding companies only pay a low 8.5% federal tax (effective 7.8%) on the income, which does not qualify for the participation relief.

## **12 Domiciliary Companies**

A domiciliary company is a company (cooperative or foundation) having only administrative activities in Switzerland. It therefore does not have either premises or staff in Switzerland. All – or at least the major part – of its commercial activities must be performed abroad. All cantons grant a specific tax status to such companies. This privilege is often sought by companies which do not fulfil the requirements for a holding privilege.

For direct federal tax, no domiciliary privilege is granted, i.e. all companies are taxed at ordinary rates like an operating company. On the other hand, most cantonal tax laws provide a domiciliary privilege.

The domiciliary company does not pay any tax on profits but only a reduced capital tax.

Although dividends of a domiciliary company are charged with the usual 35% Swiss withholding tax, possibilities for a refund apply.

For a refund of foreign withholding tax, the respective double taxation agreement as well as the Swiss Misuse Decree are applicable. The special provisions in the Misuse Decree with Belgium, France, Italy and USA also have to be respected. The requirements to be met are the same as for the holding company.

### 13 Switzerland's Double Taxation Agreement with your Country

Switzerland has concluded double tax treaties with many countries in order to avoid double taxation. The double taxation agreements negotiated by Switzerland relating to income and capital followed closely the draft model published by the OECD. As at 1 January 2008 agreements on income tax have been negotiated with the following countries (without special agreements, e.g. Brazil on ships and aircraft):

Albania	Denmark	Israel	Macedonia	Singapore
Algeria	Ecuador	Italy	Mexico	Slovakian Republic
Argentina	Egypt	Ivory Coast	Moldova	Slovenia
Armenia	Estonia	Jamaica	Mongolia	South Africa
Azerbaijan	Finland	Japan	Morocco	Spain
Australia	France	Kazakhstan	Netherlands	Sri Lanka
Austria	Germany	Kenya	New Zealand	Sweden
Bahrain	Ghana	Kyrgyzstan	Norway	Thailand
Belarus	Great Britain	Korea (South)	Pakistan	Trinidad and Tobago
Belgium	Greece	Kuwait	Philippines	Tunisia
Bulgaria	Hungary	Latvia	Poland	Turkey
Canada	Iceland	Lebanon	Portugal	Ukraine
China	India	Lithuania	Romania	USA
Congo	Indonesia	Luxembourg	Russia	Uzbekistan
Croatia	Iran	Malaysia	Saudi Arabia	Venezuela
Czech Republic.	Ireland	Malta	Serbia	Vietnam

The treaties deal primarily with direct and withholding taxes. Switzerland uses the tax exemption method and does not tax income or property that is allocated to the source country.

#### 13.1 General Rules for Foreign-Sourced Income

Under internal Swiss law and treaty relations, foreign-source income is income derived from a permanent establishment located in a foreign country or from real estate located abroad. In

addition, depending on the treaties concluded, certain types of individual income (such as directors' fees, partnership profits and special pensions) may also be exempt from taxation in Switzerland. In the absence of a treaty, foreign-source income is taxed net on any foreign income taxes or withholding taxes, as imposed on such income by the source country.

### **13.2 Refundable Swiss Withholding Tax**

The purpose of Swiss withholding tax is to ensure that income is properly declared to the tax authorities. It is therefore only refundable if the income subject to withholding taxes is declared officially. Shareholders and beneficiaries of interest payments, whether individuals or companies with Swiss domicile, can reclaim the full withholding tax of 35%.

If the shareholder or beneficiary of interest payments is not resident in Switzerland, Swiss withholding tax is refundable in accordance with the respective double tax treaty between the country of residence and Switzerland. Where there are no such treaties, the withholding tax is not refundable.

### **13.3 Refundable Foreign Withholding Tax**

The opportunity of reclaiming foreign withholding tax is subject to the following additional requirements:

- The double tax treaties with Belgium, Germany, France, Italy and USA additionally require that the income on which foreign withholding tax relief is claimed in Switzerland be fully taxed at ordinary rates at the cantonal and the federal tax level. As a consequence, such treaty favoured income has to be exempt from special cantonal tax privileges and must be taxed at ordinary rates. Otherwise the refund will not be granted.
- The Swiss regulations against the abuse of double taxation agreements ("Misuse Decree") have to be met.

### **13.4 The Swiss Misuse Decree**

In the 1960's, Switzerland issued regulations on the abuse of negotiated tax treaties, which were modified in 1997. The Misuse Decree is internal Swiss law and the Swiss authorities are to apply it in all double tax conventions negotiated. The aim of the Misuse Decree is to avoid the use of the Swiss double tax treaty network by persons or companies who are not entitled to benefit from those agreements. Swiss companies which are controlled by shareholders abroad or in which foreigners have substantial interests may only be granted

relief based on the respective double tax treaty for foreign withholding tax charged, if they meet the requirements of the Swiss Misuse Decree.

## **14 EU Bilateral Agreements**

For those EU countries with which Switzerland has a double tax treaty, the individuals and companies have the choice between the application of the double tax treaty or the EU bilateral agreement. Although the EU bilateral agreement is in force, double tax treaties are still valid.

The requirements for withholding tax exempted dividend payments, interests and licences are as follows:

- A holding period of at least 2 years for the participation;
- The participation has to be direct and at least 25%;
- The persons involved (individuals and legal entities) have to be domiciled in the EU or Switzerland.

## **15 Taxation of Individuals in Switzerland**

Switzerland taxes individuals on their income and net wealth under two different methods: tax at source and the tax return system. Tax at source is a pay-as-you-earn system, where your annual tax liability is met through being withheld from your monthly payroll. The tax return system satisfies your tax liabilities through the submission of an annual tax declaration.

In some cantons (i.e. Zurich, Vaud) individuals will be subject to tax at source on their Swiss salary and may also have to file a tax return to report additional income and/or to rectify the withholding tax at source.

### **15.1 Resident and Non-Resident**

Resident individuals are subject to personal income and net wealth taxes. An individual is resident, for tax purposes, if the centre of his vital interests is in Switzerland. Key factors are location of the permanent home, where the family lives and where most important personal and economic contacts are.

Tax residence, however, may also arise if an individual works in Switzerland for a period of at least 30 days or if he/she stays in Switzerland (without working) for a period of at least 90 days.

Non-resident taxpayers are subject to Swiss taxes only on certain source income, such as:

- income from Swiss real estate (assessed tax)
- income from business performed in Switzerland and permanent establishments located in Switzerland (assessed tax)
- income from employment performed in Switzerland or part of an international aircraft/ships/trucks-business (if paid by a resident employer in Switzerland) or having a permanent establishment in Switzerland (withholding tax)
- directors' fees (withholding tax)
- interest secured by mortgage on Swiss real estate (withholding tax)
- pensions and similar payment related to former public employment in Switzerland (withholding tax)
- income from certain Swiss retirement funds excluding the public old-age/survivor pensions/disability insurance (withholding tax)

## **15.2 Income Tax and Wealth Tax**

Income taxes are levied by the confederation and also by the 26 cantons and their municipalities. Cantonal and municipal income and net wealth taxation are defined in the cantonal tax laws. The Federal Direct Tax Act regulates federal income tax whereas the wealth tax is not levied on a federal basis. Swiss tax laws imply a rather broad definition of income. They include income from working activities (employment, self-employment), income from movable and immovable property, retirement income, compensations, and so on. Taxable income is therefore the sum of worldwide income less allowable deductions. All taxes, including husband and wife income, are pooled and taxed together.

Capital gains on private movable assets (e.g. capital gains on shares) are tax-free, unless the assets are part of the taxpayer's business. Capital gains on private real property are taxed with a separate tax that applies only on a cantonal and municipal level.

Switzerland's cantons impose a tax on an individual's net wealth defined as your worldwide assets less debts (e.g. mortgages, loans, private borrowings), but there is no such tax at the federal level. Foreign property is only taken into account to determine the Swiss tax rate.

### **15.3 Tax Rates**

In general, Swiss income tax rates are progressive. Different rates apply for married and single taxpayers, as income of husband and wife is aggregated and taxed as one. The maximum federal income tax rate is 11.5%. The cantonal rates vary considerably.

The rates for net-wealth taxation usually range between 0.1% to a maximum of 1% of the net assets.

### **15.4 Expatriates**

Expatriates benefit from additional tax deductions to those allowed in the Swiss Federal income tax declaration. As they maintain their ties with the foreign country during their stay in Switzerland, they incur extraordinary professional expenditures that are taken into consideration for tax purposes.

Extraordinary professional expenses include travel, lodging and relocation expenses as well as the apartment rental costs incurred in Switzerland, if permanent residence is maintained in the home country. It also includes the expenditures for children attending a foreign-language school, if the state schools do not offer adequate instruction.

Expatriates working for a non-resident enterprise without permanent establishment in Switzerland and a stay of less than 183 days per calendar year are often not taxed in Switzerland, as defined by the applicable tax treaties.

If the above conditions are not met, the employee is subject to federal, cantonal and municipal taxes.

### **15.5 Taxation of Resident Foreigners**

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

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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.

Under certain conditions, resident foreigners may be taxed by a lump-sum income tax instead of the ordinary income tax. This tax is not based on the effective income derived by the taxpayer, but on certain living expenses. It only applies if the taxpayer does not perform any professional activity or employment in Switzerland.

## **15.6 Corporate Tax Reform II**

The Corporate Tax Reform II, approved by referendum on February 24, 2008, attempts to improve the tax environment for domestic small- and medium-size companies and their shareholders. The most important changes are the following:

- Part taxation to mitigate the economic double burden: an economic double taxation occurs where the profit is subject to the capital gains tax at first and then to the extent distributed as dividends, will be taxed with the income tax. To mitigate the economic double burden, on a federal level the dividends will only be taxed to 60% (private property) and 50% (business assets). Please note, that on a cantonal level different percentage rates are applicable.
- Tax credit: among other measures, the Corporate Tax Reform Act II authorises the cantons to introduce in their tax laws a new provision, according to which corporations can credit their corporate income tax against capital tax. It is important to note that introducing such a tax credit system is optional for the cantons.
- Contribution of capital principle: contributions, premiums and advances made by owners of equity participation rights after December 31, 1996 may be repaid free of tax. This is positive to the extent that the previous nominal value principle is replaced by the contribution of capital principle. This provision will enter into force on 1<sup>st</sup> January 2011.

## **PART IV: ACCOUNTING AND REPORTING**

### **16 Accounting Principles**

The Swiss Code of Obligations requires that all registered business entities maintain books of account which are complete and which properly reflect the financial situation of the company. They must be kept in an orderly manner and allow identification of business assets, receivables and payables arising from business operations as well as profits and losses in each business year.

The law requires that the income statement and balance sheet be drawn up annually according to generally accepted international accounting principles, and be complete, clear and easy to understand.

Assets should not be overstated. The law specifically permits the undervaluation of assets or the creation of undisclosed reserves.

On November 11, 2002 the admission board of the Swiss Stock Exchange (SWX) decided that all listed companies of the main segment, except for banking institutes and foreign-domiciled companies, have to be in full compliance with all IFRS Standards or US GAAP in force since 2005.

### **17 Swiss Branches of Foreign Companies**

A branch of a foreign company must be registered in the Commercial Register in the same way as a branch of a Swiss company. It must conform to applicable Swiss law, for bookkeeping and the preparation of financial statements.

### **18 Audit Requirements**

All companies, corporations, partnerships and branches must prepare an annual balance sheet, a statement of income and notes, expressed in Swiss francs.

As per 1 January 2008, the changes of the small Swiss Code of Obligations Reform enter into force. Since 1 January 2008 the audit no longer depends upon the legal form of an organisation; it depends upon the dimension of the company. According to the small Swiss Code of Obligations Reform, the audit requirements are divided into ordinary audit and limited audit (review).

If two of the following specifications are fulfilled in two consecutive years, the company is obligated to perform an ordinary audit:

- Revenues  $\geq$  CHF 20 million
- Total assets  $\geq$  CHF 10 million
- Average number of full-time positions during the business year  $\geq$  50

In a limited audit (review), the statutory auditor has only to perform a few audit procedures, specified in the law (Swiss Code of Obligations). In an ordinary audit, the statutory auditor has also to verify if an internal control system exists.

The companies liable to a limited audit (review) have also the choice between the so-called opting-in (the performance of an ordinary audit) and opting-out (dispensing with an audit). Shareholders, who represent 10% of the shareholders equity, are able to demand an ordinary audit. If the company has a maximum of 10 full-time positions in the annual average and if all shareholders agree, the company can dispense with the limited audit (review).

	<b>Ordinary audit</b>	<b>Limited audit (Review)</b>
Audit scope	<ul style="list-style-type: none"> <li>• Financial statements</li> <li>• Financial statement of the consolidated accounts</li> <li>• Proposed appropriation of available earnings</li> <li>• Existence of an internal control system</li> </ul>	<ul style="list-style-type: none"> <li>• Financial statements</li> <li>• Proposed appropriation of available earnings</li> </ul>
Reporting	<ul style="list-style-type: none"> <li>• Extensive report to the executive board with conclusions concerning the financial accounting, the internal control system and the result of the audit</li> <li>• Report of the statutory auditors to the general meeting of the shareholders</li> </ul>	<ul style="list-style-type: none"> <li>• Report of the statutory auditors to the general meeting of the shareholders</li> </ul>

Obligation of disclosure	<ul style="list-style-type: none"> <li>• To inform the executive board concerning the violation of Swiss law and the company's articles of incorporation</li> <li>• To inform the general meeting of the shareholders concerning substantial violations of Swiss law and the company's articles of incorporation and if the executive board fails to take adequate action</li> <li>• To inform the judge if the company is obviously over-indebted and the executive board fails to take action</li> </ul>	<ul style="list-style-type: none"> <li>• To inform of the judge if the company is obviously over indebted and the executive board fails to take action</li> </ul>
Independence	<ul style="list-style-type: none"> <li>• Extensive independence according to the legal regulations</li> </ul>	<ul style="list-style-type: none"> <li>• Limited independence according to the legal regulations</li> </ul>

The professional qualifications of statutory auditors are defined by the law:

<b>Size criteria</b>	<b>Audit requirement defined by Swiss law</b>	<b>Requirement of the statutory auditor</b>
Publicly owned firm	Ordinary audit	Government-monitored audit company
Economically important companies	Ordinary audit	Certified accountant authorised by the audit supervision authority
Small- and medium sized companies	Limited audit	Accountant authorised by the audit supervision authority

The statutory auditors must submit, annually, a written report to the shareholders' general meeting, which must be held within six months following the ending of the financial year.

## **19 Audit Standards**

Switzerland's auditing profession is represented by the Swiss Institute of Certified Accountants and Tax Consultants. All reputable auditing companies are members of the Institute and it is not advisable to have an audit performed by a non-member firm.

The Swiss Institute of Certified Accountants and Tax Consultants has issued the Swiss Auditing Manual in four volumes. This manual serves as a guideline and recommendation for "best practice" for the Swiss auditing profession.

Statutory auditors appointed under Swiss commercial law are jointly liable with the board of directors for any losses or damages arising from the improper execution of their duties. The courts are becoming increasingly severe in this respect.

## **20 The Prevention of Money Laundering in Switzerland**

As a member of the Financial Action Task Force on Money Laundering (FATF), an inter-government body for the prevention of money laundering and terrorist financing, Switzerland is obliged to comply with and implement the recommendations of the FATF. The Swiss Federal Act on Combating Money Laundering in the Financial Sector (Anti-Money Laundering Act, AMLA) of 1997 is the result of this obligation. This Act supplements the standards of the Swiss Criminal Code and implements due diligence for financial transactions, having been implemented a long time ago in the banking sector and now also applicable to financial intermediaries who were not subject to any special legislation.

The AMLA determines the personal scope, defines the due diligence obligations (identification and record-keeping requirements) and regulates the general supervision of the relevant parties. The professional financial intermediaries can choose between the indirect supervision of a self-regulating organisation (SRO) or the direct supervision through the Anti-Money Laundering Control Authority. The AMLA contains the obligation to file a report and freeze the assets in the event of indications of money laundering activity. The essential due diligence obligations in the AMLA are the verification of the identity of contracting partners, establishing the identity of beneficial owners, periodic verification of identity, additional investigations in case of higher risk and record-keeping requirements.

With adequate controlling, the SRO ensures that member financial intermediaries comply with its regulations. This can for example be an annual inspection through experts appointed by the SRO, or a detailed report, that the financial intermediaries have to deliver yearly.

In 2001 it was resolved to revise 40 FATF recommendations and in 2003 this task was able to be completed. The minimum specifications, resulting from this revision, set international standards to the high level of the Swiss ordinance.

Switzerland takes its role as an important international financial centre very seriously. The country introduced a very strict Anti-Money Laundering Act that has subsequently been implemented. Furthermore, Switzerland adapts its legislation on money laundering to the rapidly changing environment.

## **21 Reporting, Disclosure and Filing Requirements**

To increase transparency for corporations, there are detailed regulations on how financial statements must be structured. For corporations, the basic annual statutory report is addressed to the shareholders and includes the balance sheet, statement of income, notes, the proposed appropriation of available earnings as well as the auditor's report, all expressed in Swiss francs. The board itself is required to provide an annual business report.

Insurance companies and investment funds are required to publish their financial statements, as are banks, which must publish their audited interim financial statements.

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