Switzerland

Legal overview

Executive Summary

Switzerland has a very efficient legal and taxation process for companies.

For companies wishing to set up in Switzerland, there are 7 forms of company available, which are:

- an individual company;
- a simple partnership;
- a general partnership;
- a limited partnership;
- a limited liability company;
- a partnership limited by shares; and
- a company limited by shares.

Registered Companies and Partnerships

In order to start a company in Switzerland, there are no requirements in respect of nationality or residency.

However, for the foreign founding member of the company wishes to be an employee of the same company, i.e. draw a salary , they must either be a resident in Switzerland, or in the border area and also have another representative that is a resident in Switzerland. Either way, they must hold a work permit.

Classification of Registered Companies

In Switzerland, there are three most common forms for small to medium sized companies are:

- An individual company;
- A company limited by shares (SA); or
- A limited liability company (Sàrl)

Where a company is managed by several individuals, the limited liability companies and the companies limited by shares are the most appropriate and most common. To be registered, these two types of companies must be entered in the commercial register.

Memorandum and articles of association

The incorporation of a limited liability company or a company limited by shares is has a simple process.

It takes approximately 1 month to prepare the documents and go to a Swiss notary, who will then execute the public deed (an authentic notarial instrument). It is then necessary to prepare the articles of association, the contents of which set out the main constitution of the company, including the aim of the company and the modality regarding the social shares. The companies are then incorporated as soon as they are entered in the commercial register.

Share Capital

The liability of the shareholders is limited to each shareholder's own assets, depending on their contribution to the issued shares. This liability only arises if the shares have been fully paid-up. This is the case for both the limited liability company and the company limited by shares.

In respect of the limited liability company, its shares are registered which also means that the members of that company are not and cannot be anonymous.

In respect of the company limited by shares, it gives more flexibility as the shares can be registered shares or bearer shares. However, the bearer shareholders have to register to the company and indicate who the beneficial owner is when their participation has reached at least 25% of the share capital or votes.

Public Offer of Shares

Any company wishing to have its shares listed publically on a stock exchange must comply with the stock-market legislation. In doing so, the company is subject to more strict regulations regarding restrictions to the transferability of the registered shares, the preparation of the accounts and the audit and a transparency regarding the important shareholders.

Public bids of acquisition and public exchange offers must comply with strict regulations in order to prevent risks of breaches toward minor shareholders concerning the change of the control and the progressive acquisition of the majority of the votes. Generally, the principles of loyalty, transparency and equal treatment must be observed.

The public bids of acquisition process can also be regulated by the Swiss Financial Market Supervisory Authority (FINMA).

General Meetings

For a limited liability company, a general meeting of the members is the process by which decisions are made in respect of the company.

In a company limited by shares, there are three company bodies: the Board of Directors, the External Auditors and the Shareholders. The Shareholders can attend a General Meeting, which has the power to determine and amend the articles of association; to elect the members of the board of directors and the external auditors and to approve the annual accounts and resolutions on the allocation of the disposable profit.

Directors

In a limited liability company, the shareholders run the company together, if the articles of association do not stipulate otherwise. The shareholders can also appoint and/or remove managing directors.

The board of directors is the executive organ of the company limited by shares. It represents the company externally. The board of directors is elected by the shareholders at the general meeting. There are no requirements of nationality or residency, but the company must be able to be represented by one shareholder who is resident in Switzerland. That individual must have the authority to represent the company. The board of directors can decide the organisation of the company and may delegate the business management to directors. The board of directors has the power to appoint and remove both members of the board of directors and peoples enabled to represent the company externally.

Financing of a Company

The foundation of a limited liability company requires a contribution of a minimum of CHF 20,000 of equity. The capital can then be increased, there is no upper limit.

The company limited by shares has a mandatory capital (share capital) that must at least amount to CHF 100,000. At least 20% of the capital must be paid up, but no less than CHF 50,000. That capital must not necessarily be paid up in cash. It can also be paid up as “in kind” contributions, such as real properties, equipment.

Commencement of Business

Certain steps need to be followed before the company can begin its commercial activity:

- Incorporation documents to be notarised;
- Entry into the commercial register;
- Provision of funds for the social capital; and
- Opening a bank account.

In the case of a limited liability company, the CHF 20,000 minimum contribution as equity capital is put aside. The fees that may be charged for advice in respect of setting up the initial company structure can be between CHF 600- 2,000. The notary fees for the establishment acts can cost between CHF 700 - 2,000. The fees for entry into the commercial register amount to CHF 600 as long as the social capital isn’t above CHF 200,000. In addition, the founder must pay stamp duty, that amounts to 1% of the social capital if the capital exceeds CHF 1,000,000.

Mergers and Acquisitions

The process of mergers and acquisitions are submitted to different regulators, depending on the national or international operations of the company.

Swiss law forbids the abuse of a dominant market position and it is provided by the law that the market share of big companies shall be subject to a review by a supervisory authority, so that it can be established whether the companies are going to create or reinforce a dominant market position that could phase out effective competition.

Corporate Insolvency

A limited liability company is fully liable for its own debts. Given the capital must be totally paid up, the members are not personally liable, unless the articles of association state they must make additional financial and material contributions.

For a company limited by shares, subject to particular rules, only the assets of the company are to be held liable for the obligations of the company. In the case of bankruptcy of the company, the members only lose their shares of the share capital.

Winding up of companies

The law provides in what circumstances a company can be dissolved:

- When the company is bankrupt;
- When the company is legally dissolved;
- When the company pursues an aim that is illicit or amoral;
- When there are defects in the organization of the company;
- By its own articles of association; and/or
- By a decision of the members at a general meeting.

Any of the above would result in liquidation of the company.

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Tax overview

Company Registration

After incorporation, the notary submits the application for registration to the trade register.

The company must take charge of its own formalities with the federal tax authorities if it wishes, or apply to be registered for VAT.

Once registration is made public by the trade register, the cantonal tax authorities will send the company a request for information to register it on the taxpayers roll and to determine the tax instalments to collect. Such registration also acts as the registration for direct federal tax.

The company must join an old age and survivors insurance fund (OASI), and the employee insurance schemes required for the legal cover of its employees.

Taxation arrangements

The Swiss tax regime gives cantons significant independence. Federal and cantonal tax laws provide for a number of individualised benefits (e.g. exemptions, deductions permitted, tax agreements etc.). Companies submit and negotiate personalised tax ruling applications to take account of any particularities of their operations.

Taxation of companies

The tax period follows the dates of the financial year of the company.

Each canton has its own tax schedule and each municipality has its own taxation in relation to the schedule.

a. Profit (Canton of Vaud – 01.01.2019)

Income tax is calculated on the basis of the net profit after tax made during the fiscal period.
The rate of income tax paid by companies is 8.5% nationally and 7.5% on average in the canton and municipality.
Those rates represents a total of 16%, which is applied to profits after tax, which is the same as 13.79% on profits before tax, as tax is a deductible charge.

b. Capital (Canton of Vaud – 01.01.2019)

Tax on capital is 0.06% of the equity. The Canton of Vaud applies the charging of income tax to capital tax; as a result:

- in case of a loss, capital tax is owing entirely;
- in case of a profit, the total tax is equal to at least the capital tax;
- if the income tax is greater than capital tax, capital tax does not need to be paid.

Capital tax is a cantonal tax applied in most cantons, each with its own particularities.

c. Value added tax (VAT)

The VAT rate is 7.7% for services and most goods.
The VAT rate is 2.5% for food, books and other essential goods.
The VAT rate is 3.7% for housing.
The VAT rate applied to exported goods is 0%.
Companies with a worldwide turnover of above CHF100,000 are liable for VAT in Switzerland for services and deliveries in Switzerland.
Some services are outside the scope of VAT such as healthcare, education, and insurance.

d. Issue stamp duty

When the company is incorporated, 1% stamp duty is due on the contribution of capital from shareholders in excess of CHF1 million. Subsequent increases are subject to the same rules with a calculation of the total contribution for the exemption.

e. Trading stamp duty

This is applicable to the trading of securities and insurance premiums.

f. Cantonal property taxes

The following apply, at varying rates:

- Tax on the transfer duty on the transfer of property.
- Land tax based on the value of the property.
- Additional tax on the buildings held by companies.

Treaties on double taxation

Switzerland has a number of double taxation treaties / agreements to avoid the double taxation of companies and individuals as well as to encourage regulatory and economic cooperation. The different treaties / agreements have different rates of withholding and interest arrangements and we recommend advice is sought on the particular country. Switzerland also has a number of Tax information exchange agreements (TIEAs) that are only aimed at exchanging information.

Dividend

A 35% withholding tax is applicable to any distributed dividend and must be paid to the Federal Tax Administration (FTA).

Any declaration procedure is accepted only if it is established that the foreign company receiving the dividend is a joint stock company resident in a country with which Switzerland has a double-taxation agreement or another international treaty.

Any foreign company that receives such a dividend must have at least a participating interest in the Swiss joint stock company that entitles it, under the double-taxation agreement, to a partial or total deduction of the anticipatory tax. If the double-taxation agreement does not provide for such a level of participation, the participating interest must be at least 20%.

European Union (FTA circular no 10 of 15 July 2005)

Dividends may be paid by a Swiss subsidiary to its parent located in a member State of the European Union without deducting anticipatory tax in the following circumstances:

a. Submission of the application for permission for the declaration procedure

Before the dividend is due, any Swiss joint stock company that wishes to pay a dividend asks the FTA, using form 823C for permission to benefit from the declaration procedure. The application must prove that the company that receives the dividend is located in a member State of the European Union, that it has the necessary stake of at least 25% in the capital of the Swiss paying company and that it is liable to corporation tax in its State of residence, without exemption. The information in form 823C must be confirmed by the foreign tax authorities.

b. Declaration to the FTA - after being held for two years

The Swiss joint stock company pays the dividend decided at the general meeting in full to the beneficiary foreign company. Whether the dividend is paid, transferred or credited to an account is immaterial. The Swiss joint stock company declares the payment of dividend to the FTA within 30 days of the due date using form 108 accompanied by form 103 (SA) or 110 (Sàrl) for the decisions of ordinary general meetings and form 102 for the decisions of extraordinary general meetings.

c. Declaration to the FTA - before being held for two years

The Swiss joint stock company pays the dividend decided at the general meeting after deducting the residual anticipatory tax provided in the double-taxation agreement for large holdings; if no double-taxation agreement has been entered into with the Country of residence of the company receiving the dividend, the anticipatory tax is fully deducted at 35%. Whether the dividend is paid, transferred or credited to an account is immaterial. The Swiss joint stock company declares the payment of dividend to FTA within 30 days of the due date using form 108 accompanied by form 103 (SA) or 110 (Sàrl) for the decisions of ordinary general meetings and form 102 for the decisions of extraordinary general meetings.

d. Refund of the anticipatory tax paid before the end of the minimum holding time of two years

When the two year period for holding is reached, the foreign company that receives the dividend can ask the FTA for a refund of the residual anticipatory tax applied using form 70.

USA (FTA circular no 6 of 22 December 2004)
Before the dividend is due, the Swiss joint stock company that pays the dividend submits an application to the FTA for permission to benefit from the declaration procedure using form 823. The application must prove that the US company that receives the dividend is permitted to use the double-taxation agreement and that it holds the stake necessary according to the double-taxation agreement. As a result, the signature on the document attached to form 823 must be attested by a notary public or a consular officer.

Other countries (FTA circular no 6 of 22 December 2004)
Before the dividend is due, the Swiss joint stock company that pays the dividend submits an application to the FTA for permission to benefit from the declaration procedure using form 823B. The application must prove that the foreign company that receives

the dividend is permitted to use the double-taxation agreement and that it holds the stake necessary according to the double-taxation agreement. As a result, the information in form 823B must be confirmed by the competent foreign tax authorities.

e. With prior permission of the FTA

The Swiss company pays the dividend less the residual tax provided in the double-taxation agreement; if there is a provision on full relief, it pays the entire the dividend. The Swiss joint stock company declares the payment of dividend to the FTA within 30 days of the due date using form 108 accompanied by form 103 (SA) or 110 (Sàrl) for the decisions of ordinary general meetings and form 102 for the decisions of extraordinary general meetings.

f. Without prior permission

If no application for permission has been filed earlier on, an application for permission 823B must then be submitted to the FTA along with form 108.If the application is rejected, the anticipatory tax and interest on late payment must be paid.
Companies that do not use the declaration procedure or those that are not permitted to do so can still ask for a refund of the anticipatory tax using the form applicable according to the determining double-taxation agreement.

Treatment of losses carried forward

Fiscally allowable losses of the seven financial years before the tax period that have not already been offset can be deducted from the net profit for that period.

Losses from earlier years that have not been already recovered can also be deducted from the amounts aimed at balancing a loss-showing balance sheet as part of the application of rehabilitation measures.

Losses may also be transferred between cantons.

Obligations of the employer

Social security

In Switzerland, social security is not governed by a unified federal system. The law-makers have defined mandatory and optional insurance and delegated management to public and private bodies and private insurance companies. Cantons may also provide for specific contributions.

The main welfare contributions are as follows:

Welfare contributions	Total	Employer's share	Employee's share
<u>Contribution rate on gross salary</u>			
OASI - DI - LOII			
Old age and survivors insurance	8.400 %	4.200 %	4.200 %
Disability insurance	1.400 %	0.700 %	0.700 %
Loss of income insurance (military and maternity)	0.450 %	0.225 %	0.225 %
Total	**10.250 %**	**5.125 %**	**5.125 %**
UI Unemployment insurance up to CHF148,000 per year or CHF12,350 per month)	2.200 %	1.100 %	1.100 %
Solidarity unemployment insurance on the totality of the salary exceeding CHF148,200 per year	1.000 %	0.500 %	0.500 %
<u>Distribution of contribution on gross salary</u>	□	100 %	
FA Family allowance	□	100 %	
OIA Occupational injury insurance	□		
NOIA Non-occupational injury insurance	□		100 %
POI Personal occupational insurance		50 %	50 %
LOIII (optional) Insurance for daily allowance in case of illness	□	50 %	50 %
□ The amount of contribution varies depending on the fund and insurance □ The amount of the contribution varies depending on the insurance and retirement plans			

Taxation at source

Two categories of persons are liable for taxation at source: those who are domiciled or reside in Switzerland and those who are domiciled elsewhere.

a. Persons domiciled or resident in Switzerland

All foreign workers who, without having an establishment permit (permit C) are, from the standpoint of tax law, domiciled or resident in Switzerland, are liable for taxation at source on the income from their dependent activity carried out in Switzerland. These are particularly holders of B, L, F, N and Ci permits and persons who are not permitted to reside in the country (illegal work).

b. Persons who are neither domiciled nor resident in Switzerland

All workers with their main residence in another country (regardless of their nationality, including Swiss and dual nationals) are liable for taxation at source on the income from their dependent activity carried out in Switzerland. In particular, that includes:

- persons who are gainfully occupied in Switzerland for short periods of time;
- workers who are gainfully occupied in Switzerland, where they have a second home and who go back to their main home in another country when on leave;
- cross-border workers who do not fulfil all the conditions that enable them to benefit from this tax regime;
- cross-border workers who are Swiss nationals (including dual nationals) and who have a gainful occupation governed by public law;
- persons who receive benefits (bonus, employee profit-sharing) following an activity carried out earlier in Switzerland;

Artists, sportspeople, public speakers, directors, mortgage creditors and persons who collect personal insurance benefits, domiciled in other countries, are also taxable at source in Switzerland on the benefits paid to them.

For cross-border workers, there are several particular cantonal provisions.
The cantons have their particularities and their own calculation schedules.

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