

COMPANY FORMATION IN SWITZERLAND

MAIN FORMS OF COMPANY/BUSINESS IN SWITZERLAND

Relevant types of companies for business include partnerships, sole proprietorships and corporate bodies.

Forms of corporate bodies include stock corporations, limited liability companies, cooperatives and associations. All of these have in common that the owners' liability is limited to a predetermined amount, if any. For commercial use both stock corporations and limited liability companies are suitable and popular.

Of 586,000 registered companies per 1 January 2015 a total of 206,000 were stock corporations, 160,000 were limited liability companies and 157,000 were sole proprietorships. Many more (minor) sole proprietorships are not registered as they are only obliged to register if revenues exceed CHF 100,000 p.a.

Partnerships are not widely used for business purposes. While general partnerships and limited partnerships require at least two partners, a single person can set up a business under sole proprietorship. All partnerships and the sole proprietorship have in common that at least one partner carries full personal liability for company obligations. The sole proprietorship is a very common form of company, especially for small businesses as it is simple to set up and run.

The predominance of corporate bodies can be explained both by liability and social security issues. All income from partnerships and sole proprietorships are treated as income from a gainful activity for social security purposes. Compulsory contributions amount to 9.7% (2015) plus administrative costs. This is a considerable disadvantage compared to corporate bodies, where withdrawals may be made either as salary or dividends and the social security impact can to some extent be controlled by that choice.

SPECIFIC TAX CONCERNS RELATED TO ESTABLISHING A COMPANY

As a general rule, partnerships are transparent for tax purposes. The individual partners are taxed on income and capital attributable to them together with all their other taxable income and assets. Only foreign partnerships may be treated as non-transparent and according to corporate body tax rules. Corporate bodies on the other hand are taxed for their profit and capital at the company level and owners are only taxed for dividends or any other form of distribution of profits. Only capital previously contributed by the shareholders may be distributed without a tax impact at the investor level.

Income, profit and capital tax are levied on all governmental levels. While the federal tax is standardized throughout Switzerland, cantonal and municipal taxes can vary significantly among different regions. Among other aspects tax issues are an important factor in choosing a business location. As an example standard corporate profit tax rates 2015 range from a total of 11% to 25% on pre-tax profit depending on the domicile of the company. Tax breaks for newly founded companies, holdings and mainly offshore-oriented businesses are available but also differ depending on local tax legislation. Profit tax rates can so be reduced to less than 5%. Some of these tax breaks are under heavy pressure both locally as also from other states and international organisations and may be abolished as soon as 2019.

Switzerland knows a high withholding tax on dividends. Profit distributions from corporate bodies to individual or institutional shareholders are generally subject to withholding at a rate of 35%. On principle this is refundable to Swiss shareholders and may be refundable or subject to tax-credit for foreign shareholders resident in states with applicable double taxation agreements. Only for stock corporations and limited liability companies as shareholders with participations of 10% or more in the paying company a notification procedure may apply,

where payment and refund of the withholding tax can be avoided. This applies both for Swiss domiciled beneficiaries as for foreign beneficiaries if so provided in any applicable double taxation agreements. Especially for offshore investors from jurisdictions without double taxation agreement this withholding tax can be a deal-breaker.

VAT (standard rate currently 8%) is independent of the legal form of the business. All businesses are liable to registration and taxation if their taxable revenues exceed CHF 100,000 p.a. Other businesses may opt for voluntary registration, an option worth verifying if input VAT exceeds turnover VAT.

LEGAL ISSUES RELATED TO ESTABLISHING A COMPANY

Generally, no permission or membership in a professional association is required to establish a business. Aliens with no permanent residence or work permit can take up business activities by fiduciary services from a resident person. All business sectors are open for foreign investments. Clearly, some activities may then be subject to approval, as for example in the weapons industry or healthcare sector.

Any commercial, industrial or other activity conducted according to business principles must be entered in the local commercial register. In the case of corporations this is a prerequisite for them to legally come into existence.

All corporations must at all times have at least one authorized representative with residence in Switzerland. This may be a member of the board or an employee with signatory power.

Stock corporations require a minimum share capital of CHF 100,000, of which CHF 50,000 must be paid in. Limited liability companies require a minimum capital of CHF 20,000 which must be paid in entirely.

The acquisition of Swiss real estate by foreigners is legally restricted. Companies controlled by foreigners will under certain circumstances require a permit and may only acquire properties serving their operational requirements. EU citizens residing in Switzerland and Swiss citizens as well as their controlled companies are exempt.

CULTURAL CONCERNS RELATED TO ESTABLISHING A COMPANY

In general, setting up a new business is met with appreciation, especially if new work places are created in the process. Depending on the line of business concerns may arise as in any other country.

It is important to understand that Switzerland is a multicultural country. An obvious characteristic is the variety of four national languages, of which three are used in dealings with administrative bodies of the government. So, depending on the region where a company shall be established, either French, Italian or German will be necessary to communicate with the relevant offices, even if English is widely spoken.

OTHER COUNTRY-SPECIFIC ISSUES RELATED TO ESTABLISHING A COMPANY

Switzerland is a federation of 26 cantons and half cantons. While for example foreign or security policy is managed at the federal level a lot of power remains with the individual cantons. For business purposes the basic rules are laid out in federal laws but the playing field may differ from canton to canton as many aspects may be treated differently based on the local laws and regulations.