

# Doing business in Switzerland



**Content**

- Foreword ..... 4
- 1. Country profile ..... 5
  - 1.1 General..... 5
  - 1.2 Languages..... 6
  - 1.3 Swiss Culture..... 7
  - 1.4 Education ..... 8
    - 1.4.1 General..... 8
    - 1.4.2 Education institutions..... 8
  - 1.5 Healthcare..... 9
- 2. Political system.....10
  - 2.1 General.....10
  - 2.2 The democracy on the federal level .....12
  - 2.3 The democracy on the cantonal and communal levels.....13
- 3. The Court system and litigation ..... 14
  - 3.1 Cantonal courts ..... 14
  - 3.2 Federal courts..... 14
  - 3.3 Litigation in Switzerland ..... 16
- 4. Swiss economy ..... 18
  - 4.1 General.....18
  - 4.2 The financial market .....19
    - 4.2.1 Money laundering and terrorist financing .....20
    - 4.2.2 The protection of privacy – banking secrecy .....20
  - 4.3 The consultants market .....21
  - 4.4 Inspection and logistics.....21
  - 4.5 Public transport.....21
  - 4.6 Development .....24
  - 4.7 Financial situation of the Confederation.....24
- 5. The labour market ..... 25
  - 5.1 General.....25
  - 5.2 Employment agreement.....25
  - 5.3 Gender equality in the Federal Constitution .....26
- 6. Swiss social security.....27
  - 6.1 General.....27
  - 6.2 State pension and invalidity insurance (1<sup>st</sup> pillar) .....27
  - 6.3 Occupational welfare (2<sup>nd</sup> pillar).....28
  - 6.4 Accident insurance .....28
  - 6.5 Health insurance fund.....29
  - 6.6 Unemployment insurance .....30
  - 6.7 Income compensation and maternity insurance .....30
  - 6.8 Family allowance .....31
  - 6.9 Overview of the costs of the social insurance .....31

7. Immigration .....	32
7.1 General.....	32
7.2 Free movement of persons.....	32
7.3 Citizens from founding members of the EU (EU17+EFTA) .....	33
7.4 Citizens from new members of the EU (EU-8) .....	33
7.5 Romania and Bulgaria (EU-2).....	34
7.6 Third-country citizens.....	35
7.7 Bringing family members .....	36
7.8 Cross-border commuters .....	36
8. Purchasing real estate property .....	37
8.1 Formal requirements.....	37
8.2 The real estate market.....	37
8.3 Taxes on real estate property .....	37
8.4 Requirements for foreigners .....	37
8.4.1 Real estate for private residential purposes .....	39
8.4.2 Real estate for permanent business establishments.....	40
8.4.3 Special regulations .....	40
8.5 Financing real estate .....	40
9. Taxes .....	41
9.1 Direct federal tax .....	41
9.2 Taxation on natural persons .....	41
9.3 Corporate taxation .....	42
9.4 Federal withholding tax on capital income .....	43
9.5 VAT (value added tax).....	44
9.6 Federal stamp duty.....	44
9.7 Other cantonal and municipal taxes.....	44
9.8 Tax at the source for foreigners .....	46
9.9 Tax amnesty.....	46
9.10 National tax agreements.....	48
9.11 Declaration and payment of taxes.....	48
9.12 International cooperation in tax matters .....	48
10. Company Law .....	50
10.1 The commercial companies.....	50
10.2 Formation of a company.....	50
10.2.1 First steps.....	50
10.2.2 Foundation procedure.....	51
10.2.3 Formal requirements for the management of a corporation.....	51
10.2.4 Comparison corporation and limited liability company.....	52
10.3 Intellectual property rights.....	53
11. Customs .....	54
12. Investing in Switzerland.....	55
12.1 Investment incentives .....	55
12.2 Investors.....	55
Useful links:.....	56

## Foreword

Anyone intending to do business in Switzerland should acquire knowledge of the investment environment and get informed about the legal, accounting and taxation systems in order to succeed.



Switzerland tops - for the second time - the overall ranking in The Global Competitiveness Report 2010-2011 released by the World Economic Forum and is there named the most innovative nation in the world. This award is based on the economic and political stability, a liberal labour market, a favourable tax climate, a high labour force participation rate, an efficient public service, an important pharmaceutical infrastructure as well as good traffic facilities.

But there are also weak points. The WEF criticises that the proportion of college graduates is too low and there is a lack of professionals (the unemployment rate of as little as 3,6% is mainly made up by unqualified workers or young people that have completed their apprenticeship and are in search for work). As a result of this, Switzerland has become an immigration country and counts about 80'000 to 100'000 immigrants every year, in particular from Germany, and most of them are highly skilled professionals.

---

On September 6th, 2011, the Swiss National Bank did set a minimum exchange rate at CHF 1.20 per EUR ([www.snb.ch](http://www.snb.ch)). This rate is used in this documentation.



Switzerland occupies an area of about 41'300 km<sup>2</sup> and is - besides of Denmark, Luxembourg and Liechtenstein - the smallest country in Western Europe. On the other hand its population of 7,8 million (year 2011) inhabitants is larger than for example in Finland, Norway, Denmark, Ireland and the states of former Yugoslavia (with the exception of Serbia).

The country is divided into three main parts: in the northwest is situated the mountain chain Jura with about 15% of the surface, the Alps in the southeast cover about 40% of the surface and the centre - the "Midland" (Mittelland) - where the majority of the inhabitants live, occupies about 45% of the surface.

The climate in Switzerland depends on the region: in the Midland summertime is warm with temperatures up to 30°C and wintertime rather mild, in the Alps summertime is short and mild, wintertime cold and mostly covered in snow. In the southern part of the country, in the Canton of Ticino, one finds a Mediterranean climate and vegetation.

## 1.2 Languages

Switzerland has four national languages, three Confederation official languages: German (64,7%), French (20,4%), Italian (6,5%), and as a fourth, only official in Grisons, the Romansh (0,5%). The remaining 7,9% consists of different foreign languages.



The Swiss German is predominantly a range of Swiss dialects, but newspapers and some broadcasts use Standard German. A lot of Swiss citizens speak more than one language. English is widely known, especially among professionals.

In the majority of cantons, the scholars have to study a second national language (and English as a third); in some other cantons English is considered as second and as third another national language.

### 1.3 Swiss Culture

Switzerland is in the unusual situation of being the home of three of Europe's major languages. Swiss culture is characterised by diversity, which is reflected in a wide range of traditional customs. A region may be in some ways strongly culturally connected to the neighbouring country that shares its language, the country itself being rooted in western European culture. The linguistically isolated Romansh culture in eastern Switzerland constitutes an exception, it survives only in the upper valleys of the Rhine and the Inn and strives to maintain its rare linguistic tradition.

Alpine symbolism has played an essential role in shaping the history of the country and the Swiss national identity. Some areas throughout the year have a recreational culture that caters to tourism, yet the quieter seasons are spring and autumn when there are fewer visitors and a higher ratio of Swiss. A traditional farmer and herder culture also predominates in many areas and small farms are omnipresent outside the cities. Folk art is kept alive in organisations all over the country. In Switzerland it is mostly expressed in music, dance, poetry, wood carving and embroidery. The alphorn, a trumpet-like musical instrument made of wood, has become alongside yodelling and the accordion an epitome of traditional Swiss music.



Besides the traditional national culture, Switzerland offers a wide choice of international cultural events. Seven Operas spread over the country show famous stage performances and nearly every larger city has its own symphonic orchestra.



## 1.4 Education

### 1.4.1 General

After the disquieting result of the PISA survey, Switzerland is now reforming and harmonising the basic school system. Depending on the canton, the school attendance (Kindergarten) is established at the age of 4 at the earliest, the basic education at the age of 7 at the latest. At the age of 11, the schooling is divided into basic school and secondary school (or grammar school). In some cantons, high school can be attended at the age of 13, in others at the age of 14.

An alternative to the high school and academic studies is the apprenticeship which is composed by a theoretical part at a training school and a practical part in a company. The apprenticeship starts after completion of the compulsory school attendance of 9 years, i.e. in general at the age of 16.

### 1.4.2 Education institutions

According with the Swiss law on publicly financed Swiss Universities, there are 12 general higher education institutions in Switzerland (10 cantonal universities and 2 federal institutes of technology plus a number of specialized universities, e.g., Universities of Applied Sciences. The Swiss Federal Institutes of Technology are in Zurich: Eidgenössische Technische Hochschule → ETH and in Lausanne: École polytechnique fédérale de Lausanne → EPFL. The ETH in Zurich is usually ranked the top university in continental Europe.

Persons who have accomplished an apprenticeship or a vocational diploma can attend a college of higher education what enables academic studies, too. Persons with a vocational qualification have further the option to award officially recognised diplomas, so called masters, in their professions and several universities do also offer to their students continuing education units, for example Master of Business Administration etc.



The campus of the Swiss Institute of Technology in Zürich (ETH).



## 1.5 Healthcare

Healthcare in Switzerland is universal and is regulated by the Federal Health Insurance Act of 1994 (Krankenversicherungsgesetz - KVG). Health insurance is compulsory for all persons residing in Switzerland. International civil servants, members of permanent missions and their family members are exempted from compulsory health insurance. They can, however, apply to join the Swiss health insurance system.

All inhabitants in Switzerland are required to purchase basic health insurance, which covers a range of treatments detailed in the Federal Act. It is therefore the same throughout the country and avoids double standards in healthcare. Insurers are required to offer this basic insurance to everyone, regardless of age or medical condition. They are not allowed to make a profit off this basic insurance, but can on supplemental plans.

The Swiss Healthcare system is characterized by a quick access to practicing doctors and hospitals, there are hardly any waiting times, and the system offers a high-end medicine with a remarkable service. But this standard comes at a remarkable price: Besides of the United States, Switzerland has the most expensive health care system worldwide.



Berne's University Hospital, the Inselspital, is a medical center of expertise, state-of-the-art technology and science with an international appeal.

The Inselspital is, of course, not currently built on an island. The name comes all the way from the 1400s when the hospital was first built on an island in the Aare River.

## 2. Political system

### 2.1 General

In order to understand the Swiss system, one has to consider that its organisation is much decentralised. It has a federal structure with four different political levels: the people, the Confederation, the cantons and the communes, the latter with remarkable manoeuvre rooms. Therefore, in the first instance the commune is the top priority and competent authority for the people.

The 4 powers in the Swiss political system are the following:

#### The people: the supreme authority

According to the Federal Constitution, the Swiss people are sovereign and ultimately the supreme political authority. The concept includes all Swiss adults who are eligible to vote – equivalent to around 60 per cent of the resident population. Those under the age of 18 and foreign nationals have no political rights at federal level.

The supreme authority elects:

#### Parliament: the legislative authority

The Swiss parliament consists of two chambers which, when in joint session, are known as the United Federal Assembly. It is the country's legislative authority.



The National Council, through its 200 members, represents the population of the country as a whole – the individual cantons are represented in proportion to the number of their inhabitants.

The Council of States represents the 26 cantons – 20 cantons are represented by two members while the six former half-cantons each send one representative to the 46-strong chamber. Both chambers are directly elected by the people: the National Council is elected in accordance with federal rules and the Council of States according to provisions differing from canton to canton. In both cases, the cantons form the constituencies.

The legislative authority elects:

#### The government: the executive authority

The Swiss government consists of the seven members of the Federal Council who are elected by the United Federal Assembly for a four-year term. The President of the Swiss Confederation is elected for one year and is regarded as *Primus inter pares*, or first among equals, for this period. In 2011 this office is held by Micheline Calmy-Rey. She leads the meetings of the Federal Council and undertakes special representational duties.

The average term in office is 10 years and since 1848, only five counsellors have not been re-elected. The record holder at present is Karl Schenk who was in office 30 years, followed by Adolf Deucher and Giuseppe Motta with 29 and 28 years, respectively.

The legislative authority elects also:

#### The Federal Supreme Court: the judicative authority

The highest rulings in Switzerland are made by the Federal Supreme Court in Lausanne, the Federal Insurance Court in Lucerne and since 2004 by the Federal Criminal Court in Bellinzona. The court in Lausanne has 30 full-time and 30 part-time judges, that in Lucerne consists of 11 full-time and 11 part-time judges and the new court of first instance in Ticino currently has 11 judges.

The cantons are governed much decentralised why it is difficult to talk about general rules that are binding for all.

Hereafter a short review:

The Swiss Confederation (“Schweizerische Eidgenossenschaft”) – Confederation is the name used in Switzerland for the state – is competent for foreign relations, defence, agriculture, the main part of social security, workers protection, frame for universities, traffic (railways, highways, aviation, customs, indirect and other federal taxes). In the Confederation, there are three powers: the executive (the Federal Council), the legislature (the Federal Assembly) and the judiciary (the Federal Supreme Court).

The cantons are the states that originally united in 1848 to form the Confederation, to which they each relinquished part of their sovereignty. They are competent for health services, education, laws of social welfare, cantonal roads etc. and for cantonal taxes.

The communes are the lowest level of the state structure. All the cantons are divided up into political communes. In addition to the tasks that are allocated to them by their canton and also by the Confederation, the communes also have their own powers in various areas. They are competent for building regulations, primary and secondary schools, execution of social welfare, municipal services (water, waste etc.), construction of real estate and communal taxes.

## **2.2 The democracy on the federal level**

Swiss citizens are subject to three legal jurisdictions: the commune, canton and federal levels. The 1848 federal constitution defines a system of direct democracy. The instruments of Swiss direct democracy at the federal level, known as civic rights ("Volksrechte"), include the right to submit a constitutional initiative and a referendum, both of which may overturn parliamentary decisions.

By calling a federal referendum, a group of citizens may challenge a law that has been passed and published by Parliament, if they can gather 50'000 signatures against the law within 90 days. If so, a national vote is scheduled where voters decide by a simple majority whether to accept or reject the law. Eight cantons together can also call a referendum on a federal law.

Similarly, the federal constitutional initiative allows citizens to put a constitutional amendment to a national vote, if they can get 100'000 voters to sign the proposed amendment within 18 months. Parliament can supplement the proposed amendment with a counter-proposal, with voters having to indicate a preference on the ballot in case both proposals are accepted. Constitutional amendments, whether introduced by initiative or in Parliament, must be accepted by a double majority of both the national popular vote and a majority of the cantonal popular votes.

Due to the fact that the people are the last instance, the Supreme Court has no legitimacy as to constitutional amendments or laws. Subject to this are only clear offences against the European Convention on Human Rights.

These substantial civic rights explain the political stability in Switzerland (nearly all governing authorities contain representatives of the important parties) and compared to other nations, the low level of national debt. A possible rejection of a legislative proposal as result of a plebiscite can have the effect to propensity to expenditures on the part of the government.

That is how the direct democracy works. Switzerland is the only nation worldwide that practise a direct democracy!

### 2.3 The democracy on the cantonal and communal levels

The citizens elect their cantonal government and parliament (a few small cantons have still the Assembly of citizens, called "Landsgemeinde<sup>1</sup>"). It is regulated by law that all modifications of the cantonal constitution need a popular vote. Laws concerning new or extraordinary expenditures have to be admitted by the voters in some cantons, in other cantons it needs a referendum with a moderate number of signatures.

The same system applies on communal levels. The citizens elect in any case the communal governance and the communal parliament – if the commune disposes of a parliament. Small cities have, instead of a communal parliament, an assembly of citizens.



The "Landsgemeinde" in the canton of Appenzell

---

<sup>1</sup> The Landsgemeinde or "cantonal assembly" is one of the oldest and purest forms of direct democracy. Everyone can debate a question and voting is accomplished by those in favour of a motion raising their hands. It is still practised in two cantons of Switzerland (Glarus and Appenzell) on the cantonal level and in others on the district level. Eligible citizens (in Appenzell the sword was the sign of eligibility before women were admitted to vote in 1991! - Glarus admitted women from 1971 on) of the canton meet on a certain day in the open air to decide on laws and expenditures by the council and to elect their cantonal councillor.



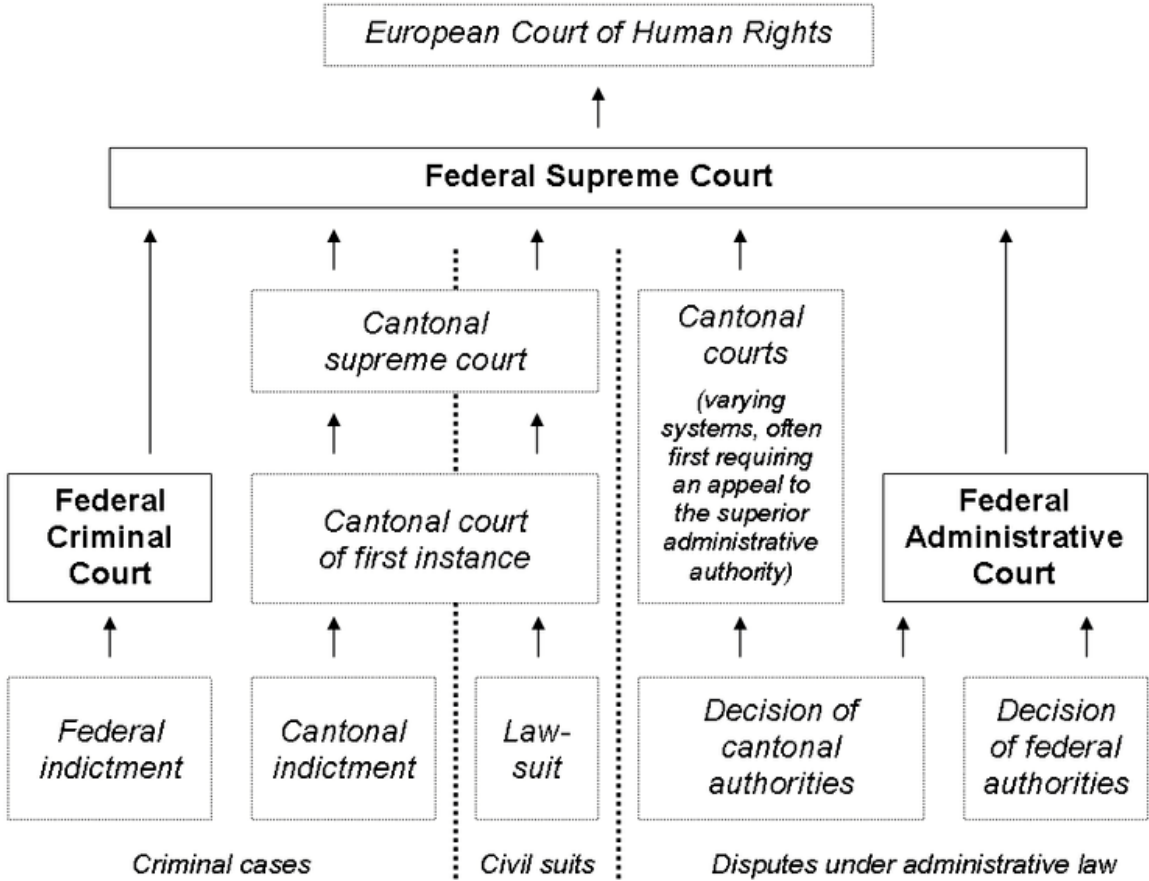
### 3. The Court system and litigation

#### 3.1 Cantonal courts

In general, there are two types of courts, the district court (first instance) and the court of appeal (second instance). Administrative matters are treated by the respective cantonal administrative courts, social matters by the cantonal social courts. From 2011, the federal civil procedure law and the federal criminal procedure law have been standardized and replace the former 26 cantonal laws.

#### 3.2 Federal courts

The federal judiciary of Switzerland consists of the Federal Supreme Court, the Federal Criminal Court and the Federal Administrative Court. These courts are charged with the application of Swiss federal law through the judicial process.



The Federal Supreme Court ("Bundesgericht") is established in the Swiss Federal Constitution as the supreme judicial authority of Switzerland. It is the court of appeal for all decisions of the cantonal courts of last instance, and also for most decisions of the two federal courts of first instance. It has its main seat and 4 of its sections in Lausanne and a 5<sup>th</sup> in Lucerne. It consists of:

- constitutional and administrative chambers (cantonal constitution, cantonal and communal law, taxes, decisions of the federal administrative court)
- civil chambers (civil and commercial laws)
- Swiss Debt Enforcement and Bankruptcy Law
- criminal law
- social law

The Federal Supreme Court is not allowed to examine if federal laws correspond to the federal constitution. This restriction is due to the idea that a court should not have the competence to cancel the will of the citizens, but it can decide if the constitution or a federal law correspond to the European Convention of Human Rights. Due to the political situation, the court treats this question with reserve.

The Federal Criminal Court in Bellinzona, as part of the Federal Supreme Court, treats the criminal cases subject to federal criminal jurisdiction, such as cases involving organised crime, terrorism and crimes against federal institutions.



The court yard of the Federal Criminal Court in Bellinzona

The Federal Administrative Court, also part of the Federal Supreme Court, is situated in Berne and reviews decisions made in application of federal administrative law that have been issued by federal and in some cases by cantonal authorities.

Finally, the Federal Patent Court decides on patent matters.

Rulings of the Swiss Federal Court are available online for everyone and can be downloaded free of charge on the internet. The electronic library contains all officially published rulings from 1954 till 1999 and from 1<sup>st</sup> January 2000 all of them, also the non-published ones (i.e. approximately 6'000 rulings every year).



### 3.3 Litigation in Switzerland

Even though Switzerland will introduce a harmonised federal civil procedure law from January 1<sup>st</sup>, 2011, the courts are organised on cantonal level. In some cantons, for example Berne and Zurich, a commercial court in place of a regular court is competent for commercial law disputes, in other cantons there are labour courts and courts treating tenancy law disputes.

The procedure law differentiate between court cases with jurisdictional amounts up to CHF 30'000 (EUR 25'000) and cases exceeding this amount. As a matter of principle, a court case with a low jurisdictional amount starts with a so called "Schlichtungsversuch", that is to say an attempt to conciliate, where a regular or a lay judge tries to settle the lawsuit. If the court case's jurisdictional amount is limited to CHF 30'000, the legal action doesn't need to be motivated in written form; if the amount exceeds this limit, the law requires filing a substantial written motivation with respective evidence and legal review. Numerous cantons deploy several judges to treat court cases with jurisdictional amounts exceeding CHF 30'000, in other cantons one single judge can adjudge the case regardless of the matter in controversy.

The court costs have to be paid in advance by the plaintiff.

Court cases exceeding a jurisdictional amount of CHF 10'000 enable the failing party to go to the court of appeal where the case is examined in its entirety. The next level of jurisdiction is the Federal court where the failing party can file an appeal and claim legal or constitutional errors and/or erroneous evidence. Further, the failing party can claim violation of constitutional law. If the jurisdictional amount is lower, the legal action is a claim limited to points of law to the court of appeal. Here too, the next level of jurisdiction is the Federal court, but only claims for violation of constitutional law are possible.

For summary proceedings, enforcements of promissory letters, precautionary measures and other special cases, the law requires the written procedure regardless of the jurisdictional amount.



Justitia of Bern, the famous Fountain of Justice

Administrative cases and tax disputes are, at first instance, treated by the administration departments. Their decisions can be contested by filing an administrative appeal to a cantonal administration court or to a cantonal commission. At second instance, the appellant has the possibility to file a complaint for violation of constitutional or federal law to the Federal court.

The written and spoken language at court corresponds to the respective language of the canton. In multilingual cantons or districts, the claimant and the defendant can choose the language. For example, if the claimant chooses German and the defendant French, the court can either treat the case in both languages or decide on the language.

The German language is handled differently: in written it is always High German, verbally it is also High German in the eastern cantons but the other German-speaking cantons require Swiss dialect at court.

The costs of litigation go at the expense of the failing party (costs of both lawyers and court costs). The costs are fixed according to the current cantonal tariff.

Enforcing the payment of a debt basing on a court decision is regulated by the Swiss Debt Enforcement and Bankruptcy Law (SchKG).

Obligations to an action or to an omission to an action can be enforced by means of the Swiss Criminal Law. The court can also, following a new request, delegate the enforcement of an obligation to an action to the police or to a third party.

## 4. Swiss economy

### 4.1 General

Switzerland has a stable, modern and one of the most capitalist economies in the world. It has the 2<sup>nd</sup> highest European rating in the Index of Economic Freedom 2010, while also providing large coverage through public services. The nominal per capita is higher than those of the larger western European economies and Japan, ranking 6th behind Luxembourg, Norway, Qatar, Dubai and Emirates.

The Swiss economy is widely diversified but also strongly involved with the international markets. Only few countries are able to export such a high proportion of its production as Switzerland. Its most important countries of exportation are the countries of the EU, USA and the emerging countries in Asia.

Switzerland's important economic branches are:

- Pharmaceutical industry (two of the worldwide leading pharmaceutical concerns are Swiss and situated in Switzerland)
- Watch industry (more than half of all produced watches worldwide are produced in Switzerland!)
- Engineering industry (in particular highly specialised machines, supplier for the car industry)
- Tourism
- Provision of services, in particular banking and consulting

Medical engineering, energy technology, and logistics are at the fore among the new industries. The Swiss industry has very little mass production and stands rather for high quality and specialities. Although Switzerland has virtually not got any raw material, it has always a very active trade balance.

Leading industrial firms are for example Nestlé, Swatch, Novartis, Roche, ABB, Schindler, and Sulzer.

General office hours are between 8/8.30 am and 17/17.30 pm, often closed for a lunch break between 12 am and 1.30/2 pm, e.g. a workday counts normally 8½ hours.

Shops are - depending on its size, specialisation and geographical position - open between 8 am and 8 pm. In a few big cities, grocery and railway shops have increasingly open twenty-four-seven.

## 4.2 The financial market

Switzerland's financial market comprises of a number of markets, such as the Swiss stock market, Swiss bond market, Swiss derivatives market, Swiss forex market and other markets. Swiss financial market has a strong role in supporting the national economy of Switzerland.

Switzerland has a reputation as an international and open financial centre. Foreign financial market players are traditionally given free access to many areas of the Swiss financial centre. National and international financial transactions have no restrictions – except for resolutions of the UNO.

As a small and open economy with a financial industry based on the export of services, Switzerland also relies on the existence of open markets. This applies not just to asset management, but also a range of other financial services, such as insurance. Swiss banks and insurance companies are today among the leading players on the global market. The Zurich Financial Services Group for example is the third largest car insurance in the USA. The financial institutes UBS and Credit Suisse are amongst the 10 most important banks throughout the world.

Swiss banks are leading in the field of Asset management. Depending on the bank, foreign customers need to place financial assets of CHF 1 million or more, American customers can practically not place money with a Swiss bank anymore or be owner of a Swiss bank account. On interest or dividend income for EU citizens holding a Swiss bank account, the tax at source is anonymously transferred to their countries of origin.

The Swiss franc remains one of the world's strongest currencies with the lowest inflation rate, this thanks to the strong and stable economy and the very low national debt in the public sector. But the strong Swiss franc causes problems for the exporting industry and the tourism. Since the beginning of 2010, the Euro dropped from CHF 1.35 to CHF 1.05. The same applies for the US Dollar, which suffered an exchange loss from CHF 1.05 to CHF 0.87). However, on September 6th, 2011, the Swiss National Bank did set a minimum exchange rate at CHF 1.20 per EUR<sup>2</sup>.

The Swiss Franc coins, for example, were introduced 1848 and are – except of the five francs coin which was reduced in size 1931 – still in circulation (1 CHF [Swiss Franc] consists of 100 "Rappen" [cents]).

---

<sup>2</sup> Press release dated September 6<sup>th</sup>, 2011: The current massive overvaluation of the Swiss franc poses an acute threat to the Swiss economy and carries the risk of a deflationary development. The Swiss National Bank (SNB) is therefore aiming for a substantial and sustained weakening of the Swiss franc. With immediate effect, it will no longer tolerate a EUR/CHF exchange rate below the minimum rate of CHF 1.20. The SNB will enforce this minimum rate with the utmost determination and is prepared to buy foreign currency in unlimited quantities. Even at a rate of CHF 1.20 per euro, the Swiss franc is still high and should continue to weaken over time. If the economic outlook and deflationary risks so require, the SNB will take further measures.

### **4.2.1 Money laundering and terrorist financing**

Switzerland participates at the front lines internationally in the fight against cross-border financial crime, and it has potent mechanisms at its disposal for combating money laundering and terrorist financing. With its Anti-Money Laundering Act, Switzerland has an effective instrument at its disposal for combating money laundering and terrorist financing.

The Anti-Money Laundering Act imposes special due diligence obligations on financial intermediaries. These include verification of the identity of the contracting party, establishment of the identity of the beneficial owner, special clarification duties, the duty to keep records, and the duty to implement organisational measures to prevent money laundering. In cases of suspicion of money laundering, the financial intermediary must notify the Money Laundering Reporting Office Switzerland (MROS) in the Federal Office of Police.

The Anti-Money Laundering Act applies to all financial intermediaries. These include banks, securities dealers, casinos, and - subject to certain conditions - fund managers, certain investment companies and asset managers under the Capital Investments Act, as well as insurance schemes. Financial intermediaries also include natural and legal persons who, on a professional basis, accept or hold assets belonging to others or who assist in the investment or transfer of such assets.

The Financial Action Task Force (FATF) is the most important body for international cooperation against money laundering and terrorist financing. Its 49 recommendations constitute the internationally recognised standard that a country should comply with to ensure effective action against money laundering and terrorist financing. Switzerland has actively participated in the FATF's work from the outset, and has helped shape its standards.

### **4.2.2 The protection of privacy – banking secrecy**

In Switzerland, banking secrecy protects the financial privacy of citizens from unauthorised access by third parties or by the State. Important financial centres such as Switzerland are exposed to the risk of abuse for criminal purposes, and therefore require high-quality regulation and supervision. At the international level, Switzerland participates at the front lines in the fight against cross-border financial crime. It uses internationally recognised standards for ensuring integrity. By adopting Article 26 of the OECD Model Convention on international administrative assistance in tax matters in its bilateral double taxation agreements, Switzerland will now exchange information for tax purposes with other countries in individual cases and upon specific request. Switzerland is prepared to further expand the existing cross-border collaboration within the scope of bilateral negotiations and is examining measures to promote the tax honesty of bank clients (e.g. the introduction of self-declaration).

Legally defined limits of banking secrecy exist. Numerous provisions of civil law, debt collection and bankruptcy law, criminal law, administrative criminal law, and mutual assistance in criminal matters provide for exceptions to banking secrecy. Accordingly, banking secrecy can be lifted against the client's will on the order of a judicial authority or a supervisory authority.

#### **4.3 The consultants market**

- Switzerland counts about 8'300 lawyers, the big offices are concentrated in the big cities like Zurich and Geneva and - due to a special situation - in Lugano. Other consultants are
- accountants / trustees (Treuhand). This profession is unique in Switzerland and deals with small and medium companies for accountancy, taxes and, if the requirements of the law are fulfilled, the tasks of a chartered accountant.
- chartered accountants (auditors)
- tax experts
- experts for accountancy (bookkeepers, controllers)

The activity of lawyers and chartered accountants are regulated by federal law.

#### **4.4 Inspection and logistics**

Another Swiss specialty is the "Société générale de Surveillance". SGS is the world's leading inspection, verification, testing and certification company. Recognised as the global benchmark for quality and integrity, the company employs more than 64'000 people and operate a network of over 1'250 offices and laboratories around the world.

There are further two Swiss freight forwarding and logistics companies that play an important role on international level: Panalpina and Kühne-Nagel.



## 4.5 Public transport

Switzerland boasts one of the best public transport networks in Europe. Almost any place can be reached comfortably and conveniently, with trains and buses reaching even the most secluded areas. Despite the geographical problems posed by having most of the country covered by the Alps, Swiss engineers have built tunnels, bridges, amazing road passes, and numerous cable cars to bring most of the country within relatively easy reach to the traveller.

Switzerland has three international airports: Zurich-Kloten, Geneva-Cointrin and Basel-Mulhouse. There are also a number of regional airports, including Bern-Belp, Grenchen, Lugano-Agno, Samedan-St Moritz and Sion, served by charter or regional airlines. Domestic air travel is fast but expensive, and with the exception of the Geneva to Zürich flight (45 minutes), many people prefer to travel by rail or road.

The Swiss rail service is extraordinarily efficient. Trains run at least hourly from the major centres and there is a country-wide timetable of regular services. There are dining cars on many trains and specialized cars for people using wheelchairs. Facilities include a lift for wheelchairs as well as a specially adapted WC and internet access will be standard in the next generation of high-speed trains in 2014.

Busses play an important role as well. Bus services are often provided by the Swiss post services, postbuses are the national yellow buses which run connecting routes between stations and towns with no rail access. There are over 650 routes and a Swiss rail pass will let you use these buses for free.



PostBus is the leading bus company in Switzerland's public transport network. Its trademark – the three-tone horn and the yellow Postbuses – are part of Switzerland's cultural identity.

Furthermore, Switzerland disposes of a dense motorway network.



In a few years, Switzerland will inaugurate the Gotthard Base Tunnel, with its 57km the longest tunnel throughout the world. AlpTransit Gotthard Ltd., the constructor of the Gotthard axis, will hand over the tunnel to Swiss Federal Railways in operating condition at the end of May 2016. This transport link will enable to drive from Zurich to Milano within two hours.



Shell construction of the Gotthard Base Tunnel

## 4.6 Development

Switzerland becomes more and more service driven.

Geneva is today one of the most important commodity markets, 50% of the oil trade happens here and also considerably parts of the wheat and sugar trades. Geneva is also a platform for Hedge funds. For European Headquarters and headquarters of international companies it is very popular to locate in the region between Geneva and Lausanne, probably also to benefit from Switzerland's advantageous company tax rules.

Zurich is the financial centre of the country. Its influence and renown extend well beyond Switzerland's borders. "Zurich Financial Centre" is far more than a banking hub. It has developed into a centre for insurance companies, asset managers, and providers of alternative investment products.

The western part of the Swiss Midlands is expanding due to the increase in the field of medical technology. But this expansion creates also problems. The prices for real estate rise constantly and for a family with a medium income it has become nearly impossible to purchase a house or to rent a flat in this region. However, the population density is increasing and today ca. 6 millions – of the population figure of nearly 8 million – inhabitants in Switzerland are located in the Midlands.

## 4.7 Financial situation of the Confederation

The national finances of Switzerland today are sound. Since 2004, the accounts close with a surplus, what allowed reducing the national debt from 50% to 40% of the national income. Half of the debt is covered by assets, i.e. federal companies like for example Swisscom – Switzerland's leading telecoms provider, Swiss post, SBB – the federal railways).

After an economic slowdown that started in the early nineties, Switzerland introduced a debt brake in 2002. It is an expenditure rule that sets a limit on expenditure both during boom and during recession periods and applies to the federal budget and account. There is a sanction mechanism present since deviations from the expenditure limit have to be corrected in the future. Concretely, an act of parliament can automatically be annulled if it violates the criteria of the debt brake.

The financial statement 2011 is expected to result in a government surplus of 2 billion Swiss francs. This surplus will accrue to those trade branches that are affected by the strong Swiss franc.



## 5. The labour market

### 5.1 General

The Swiss Code of Obligations regulates the legal foundation of the agreement between employer and employee.

The Swiss Labour Law regulates the measures to protect the employee, for example the overtime premium for accomplished work during nights or weekends.

Collective labour agreements are concluded between the associations of employers and the trade unions, for example in the fields of construction, gastronomy, traffic. If the parties of this agreement (employers association does cover the majority of the employers and the trade unions the majority of the employees) deposit a demand, the federal or cantonal government can decide to apply the agreement for all workers in Switzerland or in its own canton. These agreements regulate for example:

- minimum salaries for the branch
- adoption of the salaries to the inflation
- maximum of working hours (40 to 41 hrs. weekly)<sup>3</sup>
- minimum of holidays (5 to 6 weeks instead of 4 foreseen in the Code of obligations)
- per diem indemnity for sickness (see employment agreement 5.2)
- early retirement for employees (for example construction branch) that retires men before they reach 65 years (or woman before reaching 64).

In general, the demands of the trade union are moderate. At several times, they tried, as the discussions with the employers failed, to fix the 40 hrs. week in the Federal Constitution but the majority of the citizens voted against this proposal.

### 5.2 Employment agreement

The employment agreement regulates the following points:

- Duration of working time (normally 41-42 hrs./week, the labour law allows 45 hrs./week in general, for some professions 50 hrs./week).
- Salary: if there isn't any collective labour agreement, the parties are completely free. A 13<sup>th</sup> salary is not mandatory by law, but usual.
- Payment of salary in case of sickness: The Swiss code of obligations foresees 3 weeks in the first year of employment; from the 2<sup>nd</sup> to the 6<sup>th</sup> year of employment, the regional labour courts give recommendations; from the 7<sup>th</sup> year on 3 months are applicable. Income replacement insurances are usually only foreseen in Collective Labour Agreements and not compulsory for not affiliated employers.

---

<sup>3</sup> Due to the strong Swiss franc, there is a tendency to raise the maximum of weakly working hours to 44 to 45 hrs. without wage adjustment.

- For female employees special rules are applicable, i.e. paid maternity leave during 14 weeks.
- The instructions to terminate a labour contract are very liberal. In principle, an employer can dismiss an employee – besides of the exceptions listed below – at any time. As a general rule, the term of notice is one month after the probation period during the first year, then two months up to nine years and three months from the 10<sup>th</sup> man-year on.
- In the following cases, a termination of a labour contract on the part of the employer is not possible:
  - if the employee is sick (this can lead to a strange situation: the employee cannot be released, but on the other hand he cannot claim his salary),
  - in case of maternity (during 14 weeks) or during military service,
  - if the termination of the contract is not compatible with the principles of loyalty and good faith.

The employee can ask an explanation of the termination but this possibility doesn't invalidate the principle of free termination.

Special conditions apply for persons in an apprenticeship.

- Holidays: The Code of obligation prescribes 4 weeks a year, thereof 2 weeks continuous. 5 weeks a year are usual for employees at the age of 50 and older. Moreover, 5 weeks a year are mandatory for apprentices.

### **5.3 Gender equality in the Federal Constitution**

In 1981, the Swiss people and the Cantons adopted a new article of the Constitution: Men and women have equal rights. The law shall provide for their equal treatment, especially as regards family, education and work. Men and women are entitled to equal pay for equal work.

But the execution of this Act is still not completed. And yet there are still great differences in pay in Switzerland. On average, women earn 20% less than men. Discriminatory behaviour accounts for about 40% of this difference. Women in managerial positions even earn up to 30% less than men. There are still typical female and male professions in the world of work. The pay level in typical male professions is considerably higher than that in female professions.

The Federal Office for Gender Equality (FOGE) is in charge to support the execution of the Gender equality Act and focus in particular on gaining recognition and improved social protection for people doing unpaid work involving the care of children and adults and housework. Combining family and work is a key element in actually achieving gender equality. Further, the FOGE provides financial support to innovative projects which promote equality at work in accordance with the Gender Equality Act.

## **6. Swiss social security**

### **6.1 General**

Switzerland has a solid and effective social insurance network. The Federal Social Insurance Office (FSIO) is the national centre of expertise on policies related to old-age, invalidity and the family. It plans, manages and monitors the corresponding social insurance systems to ensure that they function effectively. The FSIO also initiates and coordinates reciprocal social security agreements with other countries.

The Swiss Confederation spends about one quarter of its budget on social welfare. In recent years this amounted to between 13 and 14 billion Swiss francs.

The Swiss social security comprises the following institutions:

- The State pension and invalidity fund (AHV/IV) is mandatory for all inhabitants. This provision is declared as 1<sup>st</sup> pillar;
- The professional security (BVG, i.e. age pension and invalidity), declared as 2<sup>nd</sup> pillar, is mandatory for employees with a yearly income of currently more than CHF 24'360 or EUR 20'300;
- The health insurance fund is also mandatory for all inhabitants and covers the costs of medical treatment, hospitalisation and medicals. The insurers are mostly private companies and the premium differs not only because of that, but depends also on place of domicile, age etc.;
- The accident insurance covers professional and non-professional accidents. Employees that work more than 8 hours a week are covered by their employer for both types of accidents, employees working less than 8 hours a week are covered by their employer for professional accidents only;
- primes to the public unemployment insurance are mandatory for every employer and employee;
- Contributions for the compensation for military service (Swiss Army is a militia) and maternity are mandatory for every working inhabitant.
- Contributions to children allowance are mandatory for all working inhabitants.

### **6.2 State pension and invalidity insurance (1<sup>st</sup> pillar)**

The state pension and invalidity insurance is the so called 1<sup>st</sup> pillar in the Swiss social security system and is defined by the following corner points:

- The statutory retirement age is 65 years for men and 64 years for women.

- Widows, more than 45 years of age and childless or, at any age and living with their under-age children, receive a widow's pension. The same applies for widowers.
- The fund pays disability pensions and/or initiates occupational rehabilitation or other occupational measures.
- The fund is also in charge of medical measures which allow restoring the working ability.
- If the basic pension doesn't cover the living (and/or the costs for a retirement and/or care home), the fund effects complementary payments to the beneficiary.
- As a general rule, the monthly minimal retirement pension is around CHF 2'250 (approx. EUR 1'875) for a single person and CHF 3'000 (approx. EUR 2'500) for couples.

The contribution to pay to the pension and invalidity fund is calculated as percentage of the gross wage of every employee, thus regardless of the wage level. Self-employed persons pay their contribution according to the tax assessment, unemployed persons pay a yearly amount based on property and social security compensations but a minimum of CHF 420 (EUR 350).

However, the pension benefits are limited to approximately CHF 78'000.00 per year, i.e. high earners pay a solidarity surcharge.

### **6.3 Occupational welfare (2<sup>nd</sup> pillar)**

The Occupational welfare according to BVG (Pension fund), the so called 2<sup>nd</sup> pillar, is mandatory, but not for everyone: only employees with annual wages of more than CHF 24'360 (EUR 20'300) must be insured according to BVG. Disability and death are covered effective from the year in which the employee reaches the age of 18. Beginning at age 25, retirement insurance is mandatory. Each insured saves his or her individual pension capital, which is converted at one point into a pension. The employer must contribute at least one half of the amount. To join a pension fund, the company has the following possibilities:

- founding of an own pension foundation (recommended if more than 500 employees have to be insured),
- joining an open pension fund, called joint foundation,
- joining a provision system of an insurance company.

Pension insurances in Switzerland currently manage around 600 billion Swiss francs, what corresponds to currently 500 billion Euros.

### **6.4 Accident insurance**

Compulsory accident insurance was reorganised in Switzerland in 1984. One of the most important changes was the extension of insurance to cover all employees.

This extension was accompanied by the division of insurance carriers: the largest of these is the Swiss National Accident Insurance Fund (Suva), an organisation under public law.

Besides Suva, a further 38 insurance companies - private insurance organisations, recognised health insurance funds as well as accident insurance funds - provide social accident insurance.

Occupational accident insurance protects the insured person against the financial consequences of an occupational accident or an occupational disease. Accident insurance covers medical benefits, without limitation in terms of cost or time, as well as wage compensation payments (daily allowances). Non-occupational insurance is automatically part of the insurance package, provided that the insured person works at least eight hours a week for the same employer in a company that is covered by Suva's insurance remit. As with occupational accident insurance, non-occupational insurance covers the medical and financial expenses that arise after a non-occupational accident.

It is a statutory provision for every employer to insure his employees according to these rules. The premiums for occupational accidents are always at the expense of the employer, the premiums for non-occupational accidents, however, are in general deducted from the employees' wages.

For some professions (especially professions with high risks like the building sector, metal industry etc.) it is stringent to join the Swiss National Accident Insurance Fund (Suva), others can choose between the Suva and a private insurance company.

For self-employed or not working persons, the accident insurance is optional. Mostly they are insured by private accident insurance funds.

## **6.5 Health insurance fund**

Health insurance is compulsory for all persons residing in Switzerland (within three months of taking up residence or being born in the country). International civil servants, members of permanent missions and their family members are exempted from compulsory health insurance. They can, however, apply to join the Swiss health insurance system, within six months of taking up residence in the country.

Health insurance covers the costs of medical treatment and hospitalisation of the insured. However, the insured person pays part of the cost of treatment. This is done by means of an annual excess (or deductible, called the *franchise*), which ranges from CHF 300 to a maximum of CHF 2'500 as chosen by the insured person (premiums are adjusted accordingly) and by a charge of 10% of the costs over and above the excess up to a stop-loss amount of CHF 700.



The monthly premium shifts, depending on the canton, between CHF 280 and CHF 420 (EUR 233 to EUR 350). The premium is paid directly to the insurer and is not, as in many other countries, included in the taxes.

## **6.6 Unemployment insurance**

All employees in Switzerland who have not yet reached the legal retirement age must be covered by unemployment insurance. Half of the contribution is paid by the employee and the other half by the employer.

This insurance covers 80% of the lost salary (for not married persons 70%) during 400 days with a monthly maximum of CHF 7'800 or EUR 6'500 (for unemployed persons supporting their family) or CHF 6'900 or EUR 5'750 (for unemployed persons without family). In special situations (age, region with a high unemployment rate [ $> 5\%$ ]), the benefits are paid during 520 days.

If an employer needs to put his workers on short time, he can apply to be compensated by this insurance. In such a case, the insurance covers 80% of the loss of salary by the employees during 180 days. The figures of unemployed are in general around 2% to 3%. As a consequence of the latest economic crises, 3,6% of all working people in Switzerland are currently without a job (retrieved summer 2011).

## **6.7 Income compensation and maternity insurance**

The military insurance is the country's oldest social insurance institution. Until 2005, this insurance did only insure the income of persons serving in the military and did not include benefits during maternity. Until then, Switzerland did not have any maternity insurance.



Maternity insurance became obligatory in 2005

Effective from 1st July 2005, Switzerland's military insurance was integrated into Suva. Nevertheless, the military insurance will remain an independent social insurance system with its own legislation and will continue to be financed by the Swiss Confederation. T

he insurance compensates 80% of the income of persons having served in the army during a certain number of years. 2005, when the Swiss army was reduced from 600'000 soldiers to 200'000 and the voters adopted the maternity insurance, the latter was integrated in the military insurance. It covers the loss of income of working women during 14 weeks of their maternity.

## 6.8 Family allowance

Family allowances are designed to supplement family income by providing a certain level of compensation towards the cost of raising a family. The Family Allowances Act, which has been in force since 1<sup>st</sup> January 2009, entitles those on a modest income to family allowances regardless of whether or not they are in work. Depending on the canton in which they live, the self-employed may also be entitled to allowances. People working in the agricultural sector continue to be covered by special rules in the form of the Federal Act on Family Allowances in Agriculture.

The allowances consist of a child allowance (for children up to the age of 16, and in the event of incapacity up to the age of 20) of at least CHF 200 or EUR 166 and an education allowance (for children in education aged between 16 and 25) of at least CHF 250 or EUR 208 per child and month.

The cantons are free to pay higher allowances, as well as to introduce birth and adoption allowances, which many cantons have done.

## 6.9 Overview of the costs of the social insurance

Contributions in % (retrieved summer 2011)

for social security for:	employer	employee
AHV-IV-EO (1 <sup>st</sup> pillar)	5,15	5,15
ALV (unemployment insurance)	1,1	1,1
Occupational accident insurance <sup>4</sup>	1.4-4	0
Non-occupational accident insurance <sup>5</sup>		1,9-2,5
Family allowance <sup>6</sup>	1-2	0
Occupational welfare (2 <sup>nd</sup> pillar) <sup>7</sup>	3-10	3-10

<sup>4</sup> premium only to pay by the employer

<sup>5</sup> one half of the premium each, usually the employer pays the whole premium

<sup>6</sup> premium only to pay by the employer

<sup>7</sup> employer must contribute at least one half of the monthly amount to pay

## 7. Immigration

### 7.1 General

Switzerland has a dual system for the admission of foreign workers. For employed nationals from EU/EFTA and EU-8 states, the Agreement on the Free Movement of Persons applies leading to a straightforward permit process. The requirements differ between citizens from EU/EFTA and EU-8 states and citizens from Romania and Bulgaria →EU-2. When staying in Switzerland without gainful activity (students, pensioners, etc.) and in matters of family reunion, citizens of all EU and EFTA states enjoy the same rights.

Third-country citizens are admitted in limited numbers to the labour market in Switzerland, if their skills are urgently required and they are well qualified.

Exceptions to the admittance requirements apply where aspects of training and further education are involved or in cases where assignments are based on international cooperation agreements or cross-border projects.



Teaser by Merlin Zuni for the upcoming elections in Switzerland regarding immigration

### 7.2 Free movement of persons

On June 21 1999, the European Union and Switzerland signed seven bilateral agreements including the Agreement on the Free Movement of Persons, which came into force on 1 June 2002. The right of free movement is complemented by the mutual recognition of professional qualifications, by the right to buy property, and by the coordination of social security systems. The same rules also apply to citizens of EFTA member states.

As a result of EU eastern enlargement on 1 May 2004, the agreement was supplemented by an additional protocol containing provisions for the gradual introduction of the free movement of persons as well in the ten new EU member states.

The protocol came into force on 1 April 2006. In a referendum on 8 February 2009, the Swiss electorate approved the continuation of the Free Movement of Persons Agreement after 2009 and Protocol II on extending the Agreement to Romania and Bulgaria. The election result confirms Switzerland's commitment to the Bilateral II agreements. The protocol came into force on 1 June 2009.

The Free Movement of Persons Agreement and its additional protocol lift restrictions on EU citizens wishing to live or work in Switzerland. The same rules apply to citizens of EFTA states. The citizens of the founding EU states, including Cyprus and Malta (EU-17), and the citizens of EFTA states have enjoyed free movement rights for several years already. The citizens of the EU-8 state were granted the same unrestricted free movement rights on 1 May 2011. The citizens of Bulgaria and Romania will remain subject to restrictions till 31 May 2016 at the latest.

### **7.3 Citizens from founding members of the EU (EU17+EFTA)**

Citizens of France, Germany, Austria, Italy, Spain, Portugal, the United Kingdom, Ireland, Denmark, Sweden, Finland, Belgium, the Netherlands, Luxemburg, Greece, Cyprus, Malta, Norway, Iceland and Liechtenstein, have full rights to freedom of movement since 1<sup>st</sup> June 2007. No more transitional measures apply. However, if labour immigration from EU countries should become excessive (more than 10% of the average of the previous three years), Switzerland has reserved the option of reintroducing quotas until May 31, 2014 (specific safeguard clause).

General view:

- 9 - 90 days of employment: registration (no permit required)
- 120-day permit with sporadic in and out trips
- 3–12 months: L permit (short-term residence permit)
- 12 months or more: B permit (residence permit)
- 5 years or more: C permit (settlement permit)
- 8 days per calendar year: in general without permit and registration
- Cross-border Commuter Permit: G permit (for EN-8 nationals)
- Work permit for family members of an international civil servant: Ci permit

### **7.4 Citizens from new members of the EU (EU-8)**

The agreement with the European Union on the free movement of persons was extended by a supplementary protocol. Under this Protocol I, effective since 1st April 2006, the free movement agreement has been extended to the ten EU member states which joined the EU in 2004.

Since 1st May 2011, EU-8 citizens of Poland, Hungary, the Czech Republic, Slovenia, Slovakia, Estonia, Lithuania, and Latvia benefit from the full free movement of persons (same regulation as EU-17/EFTA).

General view:

- 120-day permit with sporadic in and out trips (for EU-8 nationals, not subject to quotas)
- Up to 12 months of employment: L permit (short-term residence permit, quota)
- 12 months or more: B permit (residence permit, quota)
- 10 years or more: C permit (settlement permit)
- 8 days per calendar year: in general without permit
- Cross-border Commuter Permit: G permit (for EN-8 nationals)
- Work permit for family members of an international civil servant: Ci permit



## 7.5 Romania and Bulgaria (EU-2)

Protocol II on extending the free movement agreement to Romania and Bulgaria (EU-2) took force on 1st June 2009. Employees and service providers from these countries will initially be subject to interim provisions, however.

Switzerland has decided to continue restrictions on citizens from Romania or Bulgaria until 2016 at the latest. Thus, citizens from these countries are facing restricted access to the Swiss labour market and are subject to special quotas. Domestic workforce can be given precedence over Romanian and Bulgarian citizens, and salary and work conditions may be checked by the authorities. The same holds for service providers doing business in certain sectors.

## 7.6 Third-country citizens

Most third country nationals do need a visa in order to legally enter Switzerland and to take up employment. The visa needs to be picked up at the Swiss Embassy in your home country before entering Switzerland. In addition, non-EU nationals usually need to provide the competent authorities with a Criminal Record. This document is a compulsory requirement for the work permit and residence application.

While there are similar work permit requirements for nationals of EU-8 and other countries, the Swiss authorities will generally require that you also fulfil the following conditions:

- Local worker priority: No local equivalent worker (Swiss national or foreigner already in the Swiss labour market) is available to fill the position.
- The wage and working conditions must meet local, professional and industry standards.
- The canton's quota for that permit must not be exhausted.

For third country nationals, the applicant must demonstrate his/her relevant qualifications, such as graduation title and relevant work experience.

A short-term residence permit (Permit L) may be granted to nationals from Third States for a stay lasting one year or more, up to the limit set each year by the Federal Council for nationals from Third States. Its term of validity is set to harmonise with the employment contract. Actually, the quota for those permits is 15'000 per year.

In exceptional cases, this permit may be extended up to a total maximum duration of 24 months, provided the employer remains the same. Normally, these permits are renewed from one year to the next, provided there are no conflicting grounds (e.g. infringements, dependency on social welfare, labour market).

Nationals from Third States may, in principle, obtain a permanent residence permit (Permit C) after ten years of a regular and uninterrupted stay. Nationals from the USA and Canada are subject to special regulations. They may choose their employer freely and taxes are no longer levied at source.

Third-State nationals may also be seconded permit-free provided they have been integrated in the European labour market for at least one year.

With regard to exercising a self-employed occupation, it is extremely rare that a residence permit is issued.

For students and trainees special rules are applicable.

## 7.7 Bringing family members

Family members are defined as spouses, children and grandchildren under the age of 21, and parents and grandparents who are financially supported by the worker. Family members of EU/EFTA employed nationals are granted an EU/EFTA permit even if they are non-EU/EFTA nationals but live permanently in an EU/EFTA country. The validity of the permit is limited to the duration of the main holder's position. Family members may work, but must notify the cantonal authorities before doing so.



## 7.8 Cross-border commuters

Workers receive this permit if they are EU/EFTA residents and work in Switzerland. They may stay in Switzerland, but must return abroad at least once a week and register their Swiss residence with the communal authorities. For EU-17/EFTA nationals, no border zones apply; residence can be anywhere in the EU/EFTA and the workplace can be anywhere in Switzerland. For EU-8 nationals, residence and workplace must lie within designated border zones.

As far as nationals from Third States are concerned, they are only granted a cross-border commuter's permit (Permit G) if they hold a durable right of residence in one of Switzerland's neighbouring countries and if, for at least six months, their regular domicile has been located in the neighbouring border zone.

## **8. Purchasing real estate property**

### **8.1 Formal requirements**

All real estate transactions have to be formalised before a public notary (the system of public notaries varies from canton to canton). The competent notary has to be situated in the same canton as the real estate. Concluding a contract on real estate from abroad is not possible. If a party needs to be represented in absentia, identification documents - foreigners need additionally a cantonal authorisation (see 8.4) - and a power of procuration, also formalised by a notary, are required. A power of procuration established abroad needs an apostille.

### **8.2 The real estate market**

Most of the residents in Switzerland, around 65%, hire a flat. The other part lives in own houses or condominium apartments. The tenancy law is quite complex and often needs involving an expert.

Companies often face different situations. Large parts of the business premises are rental objects but many manufacturers and big service companies often own their localities.

Switzerland knows extensive building regulations, especially regarding the use of the ground, the building quality and the distance to the neighbours. The land is divided into agricultural zones, residential zones and zones for business and industry. Further are to consider the environmental regulations, both on national and cantonal levels.

Building in Switzerland is rather complicated, as every municipality has its own regulations. Besides this, neighbours have several opportunities to raise objections against building plans.

### **8.3 Taxes on real estate property**

Many municipalities and some cantons impose real property taxes on real estate located in Switzerland. The rates usually range from 1‰ to 2‰, levied on the official tax value of the property (the tax value is in general remarkably lower than the market value and is periodically adapted to the inflation). The rates and the coefficient vary from canton to canton.

### **8.4 Requirements for foreigners**

The acquisition of real estate by foreigners is regulated by the "Federal Law on the Acquisition of Real Estate by Persons Abroad" (initially called Lex Von Moos, later Lex Furgler, Lex Friedrich, today Lex Koller). The Lex Koller requires "persons abroad" to obtain a permit from the appropriate cantonal and federal authorities before buying real estate in Switzerland.



The Lex Koller defines individual persons abroad as being either foreigners domiciled abroad, or foreigners that are in fact domiciled in Switzerland but are neither nationals of EU/EFTA member states nor holders of a valid settlement permit (so called C-permit). This means that nationals of EU/EFTA member states domiciled in Switzerland (in particular EU/EFTA nationals with a residence permit EU/EFTA (so called B-permit or a settlement permit EU/EFTA or, possibly, with a short residence permit EU/EFTA) as well as nationals of other foreign countries who are holders of a valid settlement permit (C-permit) and are actually domiciled in Switzerland, are not subject to the Lex Koller. With respect to the acquisition of real estate their position is equal to that of a Swiss citizen.



The Lex Koller shall protect from foreign speculators in real estate

Legal entities are considered "persons abroad" if they are either domiciled abroad or are controlled by persons abroad. Control of a legal entity by persons abroad is deemed where such persons abroad:

- own more than one-third of the company's equity capital
- dispose of more than one-third of the voting rights, whether directly or indirectly, in the shareholders' meeting of the company; or
- provide the company with repayable funds representing more than one half of the difference between the company's assets and its debts vis-à-vis persons that are not subject to the Lex Koller.

The term "acquisition of real estate" encompasses not only the direct purchase of real estate but also the acquisition of property rights on the real estate as well as the procurement of a right of ownership or usufruct of a share or of the entire legal entity with more than one-third of its total assets consisting of Swiss real estate, provided that persons abroad thereby obtain or reinforce a controlling position in such entity.

A permit, if required, is issued if there is no compelling reason for refusal. Such reasons for refusal include the acquirer's attempt to evade the law, the protection of national interests, and the prevention of mere capital investments. Furthermore, the acquisition of a secondary residence by non-cross-border commuters (which requires prior authorisation; see above) as well as the acquisition of a holiday home or hotel condominium unit by persons requiring prior authorisation is refused if either the acquirer himself/herself or his/her spouse or children under the age of 20 already own such a home in Switzerland.

#### **8.4.1 Real estate for private residential purposes**

No permission is required for the acquisition of real estate for private residential purposes by an individual "person abroad" (in the sense of Lex Koller), provided that such property serves the purchaser as their main residence at the place of their rightful and actual residence, and provided that the purchaser actually lives there (renting out is not allowed).

Consequently, such person must have an adequate permit to stay. If building land is acquired, construction work on the accommodation (their main residence) must start within one year. Furthermore, the surface area of the purchased lot may not be larger than required by its purpose. The competent cantonal authorities will decide on the admissibility of lots larger than 3'000 square meters.

As outlined above, nationals of EU and EFTA member states domiciled in Switzerland as well as holders of a valid settlement permit (C permit) are not qualified as "persons abroad" in the sense of the Lex Koller. Therefore, the above is only relevant for nationals of other foreign countries residing in Switzerland based on a residence permit (B permit).

Nationals of EU/EFTA member states working as cross-border commuters in Switzerland (while remaining domiciled in the respective neighbouring foreign country), may acquire a secondary residence in the area of their place of work without authorisation. For as long as the purchaser continues working in the area as a cross-border commuter, they must occupy the residency themselves.

The acquisition of a secondary residence by a foreigner domiciled abroad who is not a cross-border commuter is, however, not possible without authorisation. Still, there are a few cantons that have introduced special provisions according to which a foreigner domiciled abroad who is not a cross-border commuter may be authorised to acquire a secondary residence in a place with which he has exceptionally close ties worthy of protection.

### **8.4.2 Real estate for permanent business establishments**

No authorisation is needed to buy real estate for the purpose of creating a permanent establishment for a distribution, manufacturing or other type of commercial business, for a workshop or for the practice of a liberal profession (e.g. law offices, doctor's practice).

It is also possible for the purchaser to acquire the property as a mere capital investment and to then rent or lease it to somebody else for the pursuit of an economic activity (in other words, use as a permanent business establishment). Moreover, the participation by foreign investors in business enterprises does not require permission, not even if the company premises of these enterprises consist of a considerable amount of land.

On the other hand, the acquisition of real estate for the purpose of building, renting or leasing housing accommodation or for the purpose of trading in such accommodation requires prior authorisation and is, in principal, excluded for lack of grounds for granting such authorisation. Living accommodation run on a hotel basis are, however, considered as permanent business establishments (see above) and may therefore be acquired or built without authorisation.

### **8.4.3 Special regulations**

No permission to buy real estate will be given for agricultural real estate, except if the buyer is a farmer.

Switzerland does also approve applications for low-priced domestic housing.

## **8.5 Financing real estate**

The purchase of real estate is usually realised by raising a mortgage with a bank. In general, the banks finance 60% to 65% of the market value. The financing quota can however be lower if the object consists of business premises. The different types of mortgages are many, the actual interest rate moves – depending on bank and mortgage type – around 1.6% and 2.5% p.a.

To avoid unpredictable swings in the interest-rate cycle and if you want to know in advance how much interest you'll be paying on your loan, you can opt for a fixed-rate mortgage for a term up to 10 years. The interest-rate varies between 2,4% and 2,6% depending on bank and term duration.

## 9. Taxes

Taxes in Switzerland are levied by the Swiss Confederation, the cantons and the municipalities. Switzerland is sometimes considered a tax haven due to its general low rate of taxation, its political stability as well as the various tax exemptions or reductions available to Swiss companies doing business abroad, or foreign persons resident in Switzerland.

The Federal Constitution imposes certain limits on taxation at the federal, cantonal and municipal levels. To begin with, it provides that no tax may be levied except where provided for federal, cantonal or municipal statute. Because statutes can at all levels be subject to a popular referendum, Swiss tax rates are in practice set directly by the voters through instruments of direct democracy.

The Swiss Confederation is exclusively competent for

- indirect taxes, (Value added tax, alcohol tax, separate beer tax, tobacco tax,
- direct federal taxes
- taxes deducted at source
- stamp duties

Besides this, the cantons claims direct cantonal taxes and the municipalities direct municipal taxes. Every canton has its own tax law which is also executed by the municipalities. All cantons know also capital gains taxes (when selling real estate) and some cantons provides also for cantonal stamp duties on documents.

### 9.1. Direct federal tax

The direct federal tax (levied on income of individuals and on profits of legal entities) is regulated by the Federal Law on Direct Federal Tax (DBG) although it is usually assessed simultaneously by cantonal tax authorities along with the cantonal and municipal taxes.

Regulations for citizens and companies (legal persons): The direct federal tax has a progressive rate (1 to 11%) and starts with a taxable income of yearly CHF 12'600 (EUR 10'500). On fortune, no direct federal tax is due. There is a special reduction for dividends if the taxable holds more than 10% of the shares of a company.

Companies pay their direct federal taxes with 8,5% of the net profit. The tax on capital for legal persons was abolished in 1998.

### 9.2 Taxation on natural persons

All persons resident in Switzerland are liable for the taxation of their worldwide income and assets, except on the income and wealth from foreign business or real estate, or where tax treaties limit double taxation.

Non-residents are also taxed on certain Swiss assets or on the income from certain Swiss sources, such as from real estate, permanent business establishments or certain pensions. The income and assets of spouses are pooled and taxed jointly, but at a lower rate to offset the effects of tax progression.

### **Income tax**

Taxable income includes all funds accruing to a person from all sources, in principle without deduction of losses or expenses, and including the rental value of a house lived in by its owner. However, capital gains on private property (such as profits from the sale of shares) are tax-free<sup>8</sup>, except where the cantons levy a tax on real estate capital gains. Certain expenses are also deductible. These include social security or pension fund payments, expenses related to the gain of income (such as employment expenses and maintenance costs of real estate) and alimonies. Gifts and inheritances are also exempt from the income tax, but are in some cantons subject to separate cantonal taxes. But more and more cantons are abolishing the inheritance and gift tax for the spouse and progenies nowadays.

Non-working foreigners resident in Switzerland may choose to pay a "lump-sum tax" instead of the normal income tax, which is generally much lower than the normal income tax. This option contributes to Switzerland's status as a tax haven, and has induced many wealthy individuals such as Ingvar Kamprad or Michael Schumacher to live in Switzerland.

### **Property taxes**

#### **Wealth tax**

Annual wealth taxes are levied at the cantonal level. Individuals pay taxes on enterprise assets and real estate situated in Switzerland. The tax payable varies from canton to canton and some cantons allow an exemption limit. The assets are valued at their market value. Personal debts, mortgages, bank loans and overdrafts are deductible, as well as certain personal deductions and allowances from the taxable base, depending on the canton.

#### **Tax on real estate property**

Many municipalities and some cantons impose real property taxes on real estate located in Switzerland. The rates usually range from 1‰ to 2‰, levied on the official tax value of the property (the tax value is in general remarkably lower than the market value and is periodically adapted to the inflation). The rates and the coefficient vary from canton to canton.

## **9.3 Corporate taxation**

Switzerland has a "classical" corporate tax system in which a corporation and its owners or shareholders are taxed individually, causing economic double taxation.

---

<sup>8</sup> (unless the tax authorities consider a very active share trading as a professional stock jobbing)

All legal persons are subject to the taxation of their profit and capital, with the exception of charitable organisations. Tax liability arises if either the legal seat or the effective management of a corporation is in Switzerland. To the extent non-resident companies have Swiss sources of income, such as business establishments or real estate, they are also liable for taxation. Conversely, as a unilateral measure to limit double taxation, profits from foreign business establishments or real estate are exempted from taxation.

### **Profit tax**

A proportional or progressive tax is levied by the Confederation (at a flat rate of 8.5%) and the cantons (at varying rates) on corporate profits. The tax is based on the net profit as accounted for in the corporate income statement, as adjusted for tax purposes. The cantons are competing with each other regarding the profit tax, the newest leader is at present Lucerne with 3% from 1<sup>st</sup> January 2012.

A number of provisions limit the double taxation of profits at the corporate level and contribute to Switzerland's tax haven status. To begin with, a "participation exemption" is granted to companies who hold 20% or more of the shares of other companies; the amount of tax due on the corresponding profit is reduced in proportion to the percentage of shares held. At the cantonal level only, a "holding privilege" applies to pure holding companies. They are exempt from the cantonal corporate profit tax. Moreover, cantonal law confers a "domicile privilege" on companies who are only administered in Switzerland, but whose business is conducted abroad; including shell corporations. The cantons tax only around 10% of the worldwide profits of such companies.

### **Capital tax**

A proportional tax is levied by the cantons (at varying rates) on the ownership equity of companies. Thinly capitalised companies are taxed, moreover, on the liabilities that function as equity. This also means that debts paid on such liabilities cannot be deducted for purposes of the profit tax, and are subject to the federal withholding tax.

## **9.4 Federal withholding tax on capital income**

The federal withholding tax is levied at a rate of 35% on certain forms of income, most notably dividend payments, interest on bank loans and bonds, (certain) liquidation proceeds, lottery prizes and certain insurance payments (life insurance and private pensions). The debtor of such payments is liable for the payment of the tax; they must pay the creditor only the net amount.

The withholding tax is basically a tax levied at source with a safeguarding nature; it can be refunded.

With respect to creditors resident in Switzerland, the withholding tax is only a means of securing the payment of the income or profit taxes, from which the creditor may then deduct the amount already withheld, or request its refund. The same applies to foreign creditors to the extent that a tax treaty provides for it. Other foreign creditors are not eligible for a refund, unless it is regulated by a double taxation convention. Such a convention constitutes also the conditions.

### **9.5 VAT (value added tax)**

The value added tax is one of the Confederation's principal sources of funding. It is levied at a rate of actually 8% on most commercial exchanges of goods and services. Certain exchanges, including those of foodstuffs, drugs, books and newspapers, are subject to a reduced VAT. Yet other exchanges, including those of medical, educational and cultural services, are tax-exempt; as are goods delivered and services provided abroad.

The party providing the service or delivering the goods is liable for the payment of the VAT, but the tax is usually passed on to the customer as part of the price. Only corporate bodies with an income exceeding CHF 100'000 are subject to the VAT.

### **9.6 Federal stamp duty**

Stamp duties are a group of federal taxes levied on certain commercial transactions.

The issue tax (Emissionssteuer) is levied on the issue of certain securities such as shares and bonds. The tax amounts to 1% of the funds raised and is payable by the issuer. The trade in shell companies (Mantelhandel) is also subject to the issue tax.

The transfer tax (Umsatzsteuer) is levied on the trade in certain securities by certain qualified traders, mostly stockbrokers and large holding companies. The tax amounts to 0.15% or 0.3% depending on whether Swiss or foreign securities are traded.

Finally, an insurance premiums tax of 5% (applicable on annual premiums) or 2.5% (applicable when establishing a life insurance and non-recurring) is levied on certain insurance premiums.

### **9.7 Other cantonal and municipal taxes**

Some central points - for example the definition of income, fortune or possible deductions - are regulated on the federal level (Federal Law on harmonisation of taxes → Steuerharmonisierungsgesetz). The cantons compose the detailed cantonal tax law which is also applicable on the municipal level.

In addition to the taxes mentioned above, the cantons are free to introduce others.



Several cantons levy an inheritance tax and a gift tax, although there is a trend towards abolishing those. Moreover, the cantons are required by federal law to levy a tax on the profit from the sale of real estate.

The tax for the transfer of a real estate– tax on the value of the property sold – is regulated by the cantons and amounts in general from 0% to 3% of the value of the estate property. Is the real estate sold with earnings, all cantons are requiring a special tax, the so called property income tax, a rather high tax during the first 4 years. This is to avoid speculation on real estate.

Taxes are also frequently levied on the ownership of dogs and motor vehicles, on lotteries, on the sale of tickets to public entertainments, or on overnight stays in certain tourist destinations.



Taxes are also frequently levied on the ownership of dogs

The cantons can also render special rules for holdings and companies without economic activities in Switzerland.

For some years, especially small cantons are in a competition of taxes. It is possible, that in some cantons, the citizens have to pay 75% less than in other cantons. As a general rule the cantons can be divided into three groups:

- low tax rates: Zug, Schwyz, Schaffhausen, Obwalden, Nidwalden, Appenzell, Lucerne (for companies)
- medium tax rates: Aargau, Thurgau, St. Gallen, Basle (both parts), Glarus, Graubünden, Ticino, Geneva, Zurich, Fribourg, Uri, Lucerne (for individuals)
- high tax rates: Berne, Solothurn, Jura, Neuchâtel, Vaud

Of course, the cantonal tax is only one element for the decision where to domicile, other elements are the prices for real estate or renting costs (cantons with a low tax rate often have high land prices), recruiting of staff, airports or other infrastructures etc.

## **9.8 Tax at the source for foreigners**

The resident taxpayer in Switzerland pays his tax due directly to the tax authority – in contrast to the system in many other countries, where the tax is deducted from the wage. For foreign workers without residence permit C who have their fiscal domicile or residence in Switzerland apply another regulation: they are subject to taxation at source, i.e. a certain percentage – depending on civil status, working place etc. – is deducted directly from their salary.

Switzerland has concluded agreements to exclude double taxation with many countries.

## **9.9 Tax amnesty**

Every inhabitant has, once in his lifetime, the possibility of a tax amnesty. This is a Swiss particularity.

The today's amnesty is an individual amnesty and not a comprehensive tax amnesty without additional taxes and tax penalties, as it was in the past (1940, 1945, and most recently, 1969).

The tax amnesty applies to direct federal taxes and the income and wealth taxes of the cantons and municipalities. All other unpaid taxes and charges, such as, for example, value-added tax, withholding tax, inheritance and gift tax, and required contributions for social insurance are outside the scope of the tax amnesty and are still owed with interest charges.

In order to increase the incentive to disclose to the tax authorities previously undisclosed assets and their income, the legal procedure for self-reporting without punishment was introduced for direct federal taxes and the cantonal and municipal income and wealth taxes. No fine will be imposed on a taxpayer who reports himself or herself for the first time. Further, criminal prosecution also does not apply to other punishable offenses which were committed in furtherance of the tax evasion (e.g., tax fraud and falsification of documents). The normal additional taxes, including interest, will nevertheless be imposed for up to ten years.

A particular regulation applies in case of inheritance: The right of tax amnesty is transitioned to the heirs, and thus even if the deceased already made use of it during his lifetime. The taxes are levied retroactively for two years regardless at what time the fiscal fraud took place. Interests are becoming due, but not any penitence.

The legal procedure for self-reporting without punishment applies not only to natural persons but also to legal entities. Self-reporting without punishment is made by the directors and officers or their representatives, who will also be exempted from criminal prosecution as well as the joint and several liabilities for the evaded taxes. Because legal entities can undergo changes in their legal characteristics and assets (e.g., changes of domicile, changes in legal form or liquidation and reincorporation), there can be difficulties in limiting the amnesty to the first instance of self-reporting and there is a potential for abuse.

Only time will tell whether the tax amnesty can create the desired incentive for increased honesty in tax matters and an increase in tax receipts or whether the change in law leads to less honest reporting and therefore a decrease in tax receipts. Taxpayers should, in any case, be aware of the positive effects of self-reporting – having in the future the feeling of no longer being subject to unexpected tax or criminal proceedings.

## 9.10 National tax agreements

Foreigners without lucrative activities in Switzerland have in some cantons (Vaud, Ticino, Berne and others with the exception of Zurich) the possibility to conclude an agreement on taxation. The conditions are different from canton to canton.

The taxable income grounds on the rental value of the real estate. At present, the tax authorities add up this value fivefold. This method is in particular exercised by wealthy artists, sportspersons and retired persons. However, this method of taxation is highly controversial and there are intentions to augment the income on a basis of 10 annual rental values.



Michael Schumacher lives in Switzerland. The reason is – as he says – that Switzerland offered him a “judicious tax agreement”

## 9.11 Declaration and payment of taxes

The taxpayers in Switzerland – if the taxation is not made at source – file, usually in spring, a tax return of the previous year. After the tax return has been filed with the required supporting documents, the cantonal tax authority assesses the amount of tax due. If the tax return contains details that are clearly incorrect, these will be corrected by the tax office. Notice of the result is then given to the taxpayer. If the taxpayer does not agree with the assessment, he or she is allowed a period of time within which to raise an objection (mostly within 30 days). Married persons are taxed jointly.

The annual tax payment is split into 3 to 10 instalments (in favour of the canton and the commune) and one instalment (in favour of the Federal Confederation). However, on well-founded demand, further instalments are granted.

## 9.12 International cooperation in tax matters

In March 2009, Switzerland agreed to adopt Article 26 of the OECD Model Convention on international administrative assistance in tax matters.

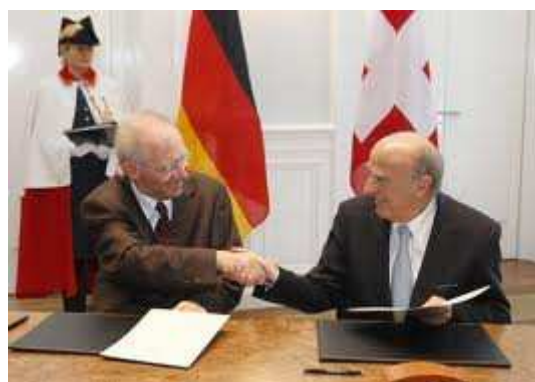
This makes it possible to exchange information for tax purposes with other countries in individual cases and upon specific and justified request, and irrespective of whether there is a tax offence.

At the same time, Switzerland is actively committed - in the OECD and in particular in the Global Forum on Taxation - to a level playing field for implementing standards internationally and to the establishment of an efficient monitoring procedure. It can thus contribute directly, formally, and in a timely manner to the discussions and projects of the committee on taxation.

Further, the Federal Council wants the interests of foreign countries in enforcing their tax legislation to be brought into harmony with the long-term interests of Switzerland as a financial centre. This is why international cooperation is to be further expanded within the scope of bilateral negotiations. In return, Switzerland expects improved market access for cross-border financial services and regularisation of undeclared accounts in relation to the tax authorities of the countries concerned. In addition, protection of the privacy of bank clients must be ensured, i.e. no automatic exchange of information.

In this regard, the Federal Council is prepared to examine different measures, which include the introduction of a final withholding tax in dealings with important neighbouring countries, as well as other measures which promote the tax honesty of bank clients and thereby help to reduce the associated legal risks.

A special method has been developed for German citizens owning securities in Switzerland. The Swiss bank levies a tax of presumably 26% of the proceeds and transfers it to the German tax authorities. The German Law considers then the assets as taxed, without the need that the Swiss bank gives the name of the taxpayer to the German authorities.



Germany and Switzerland

## 10. Company Law

Swiss company law is federal law and regulated by the Swiss Code of Obligations.

Basically two company structures are available for taking up an economic activity. The corporation (German: Aktiengesellschaft → AG, French: société anonyme → SA) and the limited liability company (German: Gesellschaft mit beschränkter Haftung → GmbH, French: société à responsabilité limitée → Sarl).

Special regulations apply for banks and insurance companies.

### 10.1 The commercial companies

The Swiss Code of Obligations (OR) knows five types of commercial companies:

- Corporation (Aktiengesellschaft, AG)
- Limited liability company<sup>9</sup> (Gesellschaft mit beschränkter Haftung, GmbH)
- Single proprietorship<sup>10</sup> (Einzelgesellschaft)
- General partnership<sup>11</sup> (Kollektivgesellschaft)
- Limited partnership<sup>12</sup> (Kommanditgesellschaft)
- Cooperative society<sup>13</sup> (Genossenschaft)

The general partnership, the limited partnership and the cooperative society have to register in the commercial register in any case, irrespective of their business volume.

### 10.2 Formation of a company

#### 10.2.1 First steps

Even if not formally required, it is recommended to preliminarily examine the company name by consulting the commercial register ([www.zefix.admin.ch](http://www.zefix.admin.ch)) in order to exclude that the selected name of the company does not already exist. On the same website you can also obtain - free of charge - information about other registered companies.

---

<sup>9</sup> The corporation (AG) and the limited liability company (GmbH) have in some parts an identical structure (limited capital, board of directors, chartered accountant if the company passes a certain business volume or a certain number of employees)

<sup>10</sup> The single proprietorship consists of one single associate, the proprietor. He is liable for all damages without limitation. The company has to get registered if the turnover is more than CHF 100'000 (EUR 83'333).

<sup>11</sup> The general partnership consists of two or more associates. They are liable without any limitation if the company is not able to cover its debts.

<sup>12</sup> One or more associates are responsible without limits, the others with limited amounts.

<sup>13</sup> The cooperative society consists of not less than 7 persons with the common aim to offer good services at a moderate price. This type of company is not interesting for foreign investors but at the sale of consumer goods. Migros and Coop are cooperative societies with an income of several billions Swiss francs.

Regular requirements are the payment of stamp duties, registration for taxes, VAT and enrolment for Social Security. Taxes differ from one canton to the next and are also dependent on applicable federal taxation regulations.

### **10.2.2 Foundation procedure**

For the foundation of a Corporation or a limited company an article of foundation must be recorded by an authenticating person (notary or lawyer authorised to record).

During the foundation procedure the following evidence must be presented to the recording person:

- articles
- declaration of acceptance by the auditing department (applicable for the corporation and the company with limited liability up to a certain limits regarding staff, accounts etc.)
- confirmation by a recognised bank that the share capital or equity capital has been deposited and the company is available for free disposal
- domicile acceptance declaration (if the company's only domicile is in Switzerland, not necessary if it is an affiliate with its headquarters in another country)
- General partnership and Limited partnership are founded by contract between the associates.

After the foundation the company has to be registered in the Commercial Register. For this the article of foundation along with the documents indicated above must be enclosed in original.

It must be observed that during the period of the registration procedure the share capital paid to the bank shall remain blocked. The deposit procedure is completed with the registration in the commercial register. However, the paid up share capital will not be available to the company until an extract from the commercial register regarding the registration of the company has been presented. However, it is possible to pay a supplementary charge to unblock the capital earlier.

### **10.2.3 Formal requirements for the management of a corporation**

The general meeting is the topmost body of the company which decides in particular on the appointment and amendments of the status, approval of the annual accounts, appropriation of profit as well as the discharge of the management. The general meeting must be held at least once a year (within six months upon expiry of the business year).

The administrative board is the management body of the corporation. It is legally entitled to non-assignable and non-deprivable tasks (e.g. top management of the company, determination of the organisation, top supervision of persons responsible for the management, preparation of the business report etc.).



At least one member of the administrative board must be resident in Switzerland. Further, all members of the administrative board must own a company share.

The auditing department (who need to be a chartered accountant) has to check, if the accounting and the yearly account as well as the application to the general meeting regarding the appropriation of the balance sheet profit are in conformity with the law and the statutes. The auditing department has to meet the demands regarding the competence and independence from the administration board and the majority of the shareholders. At least one auditor must be resident in Switzerland

Due to unequal requirements of the commercial law and the tax law it is possible that the closing accounts for the attention of the shareholders differs from those for the attention of the tax authority.

#### 10.2.4 Comparison corporation and limited liability company

	Corporation	Limited liability company
capital stock/equity capital	CHF 100'000, 20% paid up or CHF 50'000 at least	CHF 20'000, 100% paid up
form of the capital	shares <sup>14</sup> priority shares <sup>15</sup> Participation certificates <sup>16</sup> Jouissance certificates <sup>17</sup>	Equity shares according to the articles.
capital increase	By decision of the - general assembly - conditioned capital <sup>18</sup> - agreed capital <sup>19</sup>	by decision of the equity share owners
organs of the company	the general meeting the administrative board the auditing department <sup>20</sup>	the meeting of shareholders the management an auditing department <sup>21</sup>
administrative board	At least one of the members of the administrative board must be resident in Switzerland	At least one of the members of the administrative board must be resident in Switzerland
auditing department	is in principle mandatory and at least one auditor must be resident in Switzerland – however, the general assembly can decide an abdication of it according to business volume and staff	is in principle mandatory and at least one auditor must be resident in Switzerland – however, the general assembly can decide an abdication of it according to business volume and staff

<sup>14</sup> The legislation distinguishes between nominal shares (Namensaktien) and shares for the bears (Inhaberaktien). This type of shares allows that only a part of the indicated nominal value is paid. For shares for the bearer (Inhaberaktien), this is not possible. For nominal shares it is possible to set them under restricted conditions.

<sup>15</sup> Priority shares (Prioritätsaktien) foresee a higher dividend or more rights to vote than the other shares. This possibility is often used if a financial restructuring becomes necessary.

<sup>16</sup> Participation certificates (Partizipationsscheine) have a nominal value and give the right to a defined dividend but not to any shareholder right (e.g. to vote)

<sup>17</sup> Jouissance certificates (Genussscheine) do not have a nominal value but gives the right of a defined dividend.

<sup>18</sup> Conditioned capital is decided by the general assembly and allows an emission of new shares at certain conditions, e.g. convertible bonds (Wandelanleihen)

<sup>19</sup> The general assembly can decide to issue new shares (maximal 50% of the share capital) by a decision of the board of directors.

<sup>20</sup> The auditing department is facultative if some figures (balance, staff) are not exceeded. The general assembly determines this question.

<sup>21</sup> The auditing department is facultative if some figures (balance, staff) are not exceeded. The share owners determine this question.

### 10.3 Intellectual property rights

Switzerland does protect intellectual property rights by the following laws:

- Federal law on patents of invention
- Federal law on designs
- Federal law on the protection of trademarks

The Swiss Federal Institute of Intellectual Property is the federal agency for intellectual property matters and competent in this regard (homepage: [www.ige.ch](http://www.ige.ch)).

Copyright matters are governed by the Swiss Authors Association SSA, the Swiss Cooperative Society of Music Authors and Publishers SUISA, the Swiss Authors' Rights Cooperative for Audiovisual Works SUISSIMAGE, SWISSPERFORM for executive producers of audiovisual and acoustic works with its actors as well as the Swiss copyright society for literature and art PROLITTERIS.



Swiss chocolate – what else!

## 11. Customs

Switzerland is not an EU member state and claims customs clearance on all imported goods on an extensive tariff schedule. Import restrictions apply for agricultural goods and drugs.

On 1<sup>st</sup> July 2010, Switzerland introduced the Cassis de Dijon principle. Under this principle, goods lawfully produced in a member state of the European Union can also be sold in any other EU state. With certain goods this principle is only executed with restrictions. Along with the customs clearance, the importer will be charged with VAT.

Exports to member states of the EU or third countries follow the regulations of the recipient country.

There are only export controls for so called "dual-use goods" as well as for military equipment. The term "dual-use goods" refers to goods that may be used for two purposes. More specifically, these are goods and technologies which may have a second (military) purpose in addition to their intended civilian purpose.



A Swiss customs house at the border crossing to Italy

## 12. Investing in Switzerland

### 12.1 Investment incentives

Most of the cantons have created a different range of incentives and aid instruments with the goal to enforce investments in production and employment. The incentives and instruments are:

- tax benefits
- financial aids (loans)
- help to find real estate

The conditions and possibilities are different from canton to canton (information in German: [www.name of the canton.ch](http://www.name.of.the.canton.ch), for example canton Berne: [www.be.ch](http://www.be.ch); canton Solothurn: [www.so.ch](http://www.so.ch) / information in French: canton of Vaud: [www.vd.ch](http://www.vd.ch), canton Geneva: [www.ge.ch](http://www.ge.ch) etc. - these addresses contain also cantonal laws and the organisation of the authorities.

### 12.2 Investors

There is no limitation in investments (exception: agriculture, woods). The transfer of capital and earnings is free and the authorisation for settlement will be given also to investors from non EU countries if they prove:

- enough capital for the investment,
- the investment creates employment,
- the investment promotes the local or cantonal economy.

Special rules apply for investments in real estate (see chapter 8).

## Useful links:

Federal Administration	<a href="http://www.admin.ch">www.admin.ch</a> (laws, information about application of laws, generally in the national languages and a few documents in English)
Osec – The competence centre for Swiss foreign trade promotion	<a href="http://www.osec.ch">www.osec.ch</a>
Companies' register	<a href="http://www.zefix.admin.ch">www.zefix.admin.ch</a> (information about all registered companies)
Customs	<a href="http://www.ezv.admin.ch">http://www.ezv.admin.ch</a>
Taxes	<a href="http://www.estv.admin.ch">www.estv.admin.ch</a>
Federal Court	<a href="http://www.bger.ch">www.bger.ch</a> (all important decisions on leading cases since 1954, updated daily)
Cantons	The Swiss cantons have each their own homepages, Their addresses are composed of <a href="http://www.+cantonalabbreviation+.ch">www + cantonalabbreviation + ch</a> , for example <a href="http://www.zh.ch">www.zh.ch</a> (for Zurich), <a href="http://www.be.ch">www.be.ch</a> (for Berne) etc.
Intellectual property	<a href="http://www.ige.ch">www.ige.ch</a>
The Global Competitiveness Report	<a href="http://www.weforum.org/issues/global-competitiveness">http://www.weforum.org/issues/global-competitiveness</a>
Swiss Emigration	<a href="http://www.swissemigration.ch">www.swissemigration.ch</a>

September 2011

Walter Krähenmann  
Solicitor  
Belpstrasse 5  
P.O.B. 41  
3074 Muri / BE  
Switzerland

Copyright © Walter Krähenmann