

Investing in Switzerland

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1. How does your jurisdiction compare internationally as a destination for inward investment?

Switzerland is an attractive destination for foreign investment. Switzerland was ranked as the world's most competitive economy according to the World Economic Forum's Global Competitiveness Report 2014 to 2015 and often tops similar ranking tables (see, for example, IMD's competitiveness Scoreboard 2014).

In 2013, foreign direct investment in Switzerland increased to CHF688,084.4 million from CHF671,551.3 million in 2012 (source: Swiss National Bank). Many multinational companies have chosen to locate their global or regional headquarters in Switzerland (for example, Novartis, Roche, Nestlé, UBS, Google and Glencore).

Switzerland is attractive for foreign investment because it is a prosperous modern market economy, supported by excellent infrastructures (including public transportation) and a highly educated and skilled workforce. These factors result in political and economic stability with one of the highest GDP in the world (CHF78,539 in 2013 (source: BFS)).

Interest rates and inflation are low. The finances of the Federal Government and most cantons are healthy, which allows Switzerland to maintain low tax rates. Additionally, several cantons offer special treatment of profits arising out of qualified shareholdings, which is attractive for foreign investors.

Switzerland has efficient capital markets and the legal system is transparent and business-friendly. Public institutions are transparent, efficient and stable.

2. What types of companies are attracting foreign investment into your jurisdiction and what are the most active sectors?

The most significant inflows regarding foreign direct investments into Switzerland relate to chemicals and plastics, electronics, energy, optical and watchmaking, trade, metals and machinery, and insurance companies. The financial sector is also important, although in 2013 there was an outflow of capital in Switzerland.

Generally, companies in the pharmaceutical and life sciences industry, engineering and high-tech industry, and the commodities trading and the finance sectors attract the most foreign investment.

3. What will be the main factors affecting the market and how do you expect the market to develop?

Positive factors affecting the market are in particular the stability of Switzerland and the solidity of public finances.

Some recent developments will likely negatively affect the Swiss market. On 9 February 2014, the Swiss people and cantons approved the initiative against mass immigration. The initiative aims to cap immigration into Switzerland by means of maximum numbers and contingents. This will make it more difficult for companies to hire foreign employees (see Questions 8 to 10). Further, the initiative contradicts the bilateral agreements between Switzerland and the European Union (EU), which provide for free movement of persons. The implementation of the initiative, to be completed by February 2017, may breach the agreements, which would negatively affect Switzerland's relationship with the EU.

Another development affecting the attractiveness of the Swiss market is the entry into force on 1 January 2014 of a new Swiss ordinance against excessive compensation. This ordinance sets stricter rules with regard to compensation of the board of directors and the board of management. However, the consequences of this ordinance have so far been limited. For example, LafargeHolcim decided to keep their seat in Switzerland irrespective of the new regulation.

A risk to Switzerland's financial stability is the sovereign debt crisis unfolding in neighbouring euro-zone countries. The Swiss Franc's strength has made Swiss exports less competitive and has weakened Switzerland's growth outlook, which reduces the attractiveness of Switzerland for foreign investors. The Swiss National Bank's decision to give up its policy to peg the Swiss Franc to the Euro on 15 January 2015 is likely to accentuate this phenomenon.

LEGAL SYSTEM

4. Please briefly outline the government and legal system.

Switzerland is a federal state. State power is divided between the Confederation, 26 cantons and 2,396 communes. The Confederation is the name given to the Swiss state. It has responsibilities in those areas where it is granted powers by the Swiss federal constitution (for example, in foreign and international security policies, customs and financial matters as well as in defence). Further, it is responsible to a great extent for legislation in the field of civil and criminal laws, including civil and criminal proceedings. All tasks that are not designated by the constitution as federal matters remain the responsibility of the cantons (principle of subsidiarity).

The cantons as well as the communes have broad autonomy and their own sources of income through taxation. The cantons are independent in many areas such as healthcare, education, land use planning and culture. Each canton has its own constitution, parliament, government and courts.

Communes have broad autonomy in areas of local interest such as schools, social services, energy supplies, road construction or local planning. However, the communes' level of autonomy varies considerably from canton to canton, because they are determined

by each canton individually. About one-fifth of the communes have their own parliaments.

Although civil and commercial laws are governed by federal laws and regulations, the cantons retain certain executive and judiciary powers in these areas. Cantonal courts and governments are often involved in enforcing or adjudicating disputes governed by federal law in the first and second instance, subject to judicial review by the Federal Supreme Court. In other areas, the federal government may have sole executive and adjudicative power, whereas cantonal legislation and regulations are exclusively enforced at the cantonal or communal level.

Switzerland's political system has particularly strong elements of direct democracy. The electorate has extensive decision-making powers. At the federal level, the Swiss nationals have rights regarding elections, voting, popular initiative, referendums and petitions.

All political parties are involved in the decision-making process and the main parties are also represented in the executive branch at federal and cantonal levels.

The legislative authority at federal level is the Swiss parliament. It consists of two chambers, namely the National Council and the Council of States. When they are in joint session, they are called the Federal Assembly. The National Council represents the overall population, whereas the Council of States represents the cantons. Both chambers are elected directly by the people.

The federal government as the executive branch consists of the Federal Council and the Federal Chancellor. They are both elected by the Federal Assembly for a four-year-term. The Federal Council consists of seven members. Its president is elected each year and is considered first among equals (*primus inter pares*) during that time. The Federal Chancellor holds office as the government's chief of staff.

The supreme judicial authority of the Confederation is the Federal Supreme Court. It has the highest judicial authority in civil, criminal, administrative and constitutional matters. It ensures the uniform application of federal law in the 26 cantons (the ordinary courts of first and second instance are cantonal) and acts as the administrative supervisory authority of the three federal courts of first instance: the Federal Criminal Court, the Federal Administrative Court and the Federal Patent Court (www.admin.ch/org/polit/00054/index.html?lang=en).

Switzerland is a civil law country. Therefore, the Swiss legal system depends heavily on written codes as a primary source for authoritative statements of law. Judicial decisions are of secondary importance. The common law rule of binding precedent (*stare decisis*) does not apply. However, judicial decisions, especially from the Federal Supreme Court, can have a certain weight as equal treatment requires a court (as any other agent of the state) to treat the same case equally and in line with the view of the highest court of the land.

5. What are the key laws and regulatory authorities governing foreign investment in your jurisdiction?

Foreign investments are not directly regulated or supervised under Swiss law.

Foreign investors should be aware of the Swiss Code of Obligations, which largely covers corporate law, particularly in relation to the setting up of a company or the establishment of an affiliate in Switzerland. The Lex Koller plays an important role regarding the acquisition of real estate by persons domiciled abroad.

There is no general regulatory authority governing foreign investments. However, there are some specific regulatory authorities in certain industry sectors, such as the:

- Financial Market Supervisory Authority (banking and private insurance industry).
- Federal Communications Commission (telecommunication industry).
- Federal Office of Communication (telecommunication, radio and television industry).
- Department of the Environment Transport, Energy and Communication (radio and television industry).
- Federal Office of Civil Aviation (aviation industry).
- Federal Casino Commission (gaming and gambling industry).

See *Question 11* for more information about these industry sectors.

6. What international treaty organisations and/or economic, customs or monetary unions or free-trade areas is your jurisdiction a member of?

Switzerland is a member of the World Trade Organization (WTO) and a member of the General Agreement on Tariffs and Trade (GATT).

Switzerland is a founding member of the European Free Trade Association (EFTA). On 1 June 2002, a revised EFTA came into force for Switzerland, which established legal relations between Switzerland and the other EFTA states comparable to those contained in the several bilateral agreements (*Bilatérales 1 and 2*) concluded between Switzerland and the EU in 1999 (*see below*).

Switzerland is also a founding member of the Organisation for Economic Cooperation and Development (OECD).

Switzerland is not a member of the EU or of the European Economic Area (EEA). However, there is a Free Trade Agreement and several bilateral agreements between Switzerland and the EU. The *Bilatérales 1* entered into force in 1999 and concern free movement of persons, technical obstacles to trade, public procurement, agriculture, research, civil aviation and overland transport. The *Bilatérales 2* entered into force in 2004 and concern Schengen/Dublin, taxation of savings, fight against fraud, processed agricultural products, media, environment, statistics, pensions, and education, vocational training and youth. The *Bilatérales 3* have been put on hold following the Swiss people's vote of 9 February 2014 against mass immigration (*see Question 29*).

7. What other international agreements apply to foreign investment?

Switzerland has signed 28 Free Trade Agreements (FTAs) with 38 different partners outside the EU, including Turkey, Israel, several Central and Eastern European countries, Turkey, Israel, Morocco, the Palestinian Authority, Jordan, Lebanon, Tunisia, Egypt, Mexico, Singapore, Chile, the Republic of Korea, the Southern African Customs Union States, Canada, Colombia, Countries of the Gulf Cooperation Council, Peru, Hong Kong, Panama and Costa-Rica.

Most of these FTAs were signed as part of Switzerland's involvement in the European Free Trade Association (EFTA). However, Switzerland is free to sign additional FTAs outside the framework of EFTA, as is illustrated by the FTAs with Japan and China.

Switzerland has concluded double taxation agreements (DTAs) with over 80 countries, including major economic partners such as Germany, France, the US, China and Japan. 49 of these DTAs comply with the current international standards set by the OECD. Switzerland has also signed seven tax information exchange

agreements (TIEAs), of which three are already in force (with Jersey, Guernsey and the Isle of Man). TIEAs cover the issue of standard-compliant administrative assistance requests that meet the current OECD standards regarding exchange of information for tax purposes and the admissibility of group requests.

INVESTOR INDIVIDUALS

8. Are there any visas, permits or other requirements for foreign individuals entering your jurisdiction for business purposes?

The requirements applicable to foreign nationals to enter the Swiss labour market are listed in the:

- Federal Act on Foreign Nationals (AuG) ("Aliens Act").
- Decree on Admittance, Residence and Employment (VZAE).

For European citizens, the Bilateral Treaty on the Free Movement of Persons applies.

Any foreigner entering Switzerland with or without a business visa can carry out gainful activities in Switzerland for up to eight days per calendar year without having to apply for a work permit. Visa requirements have nothing to do with work permit requirements. Even if a person does not need a visa to enter and stay in Switzerland (for example, US citizens for up to three months), this does not mean that the person is entitled to work in Switzerland without a work permit.

Work permits

Different types of permit are available depending on the person's nationality.

- **Employees from non-EU/EFTA countries.** Work permits for citizens of non-EU/EFTA-countries are subject to a nation-wide quota. The annual quota is set relatively low.
- The issue of work permits depends on whether the conditions of work and salary are equal to Swiss standards. Additional payments (for example, allowances) can be required to match Swiss standards.
- These employees are only permitted to the Swiss labour market if both:
 - no appropriate candidate throughout Switzerland and EU/EFTA-countries can be found; and
 - they are considered specially qualified for the position in question.
- The employer must prove that they have complied with these conditions.
- The local labour market does not have priority in intra-company-transfers of highly qualified specialists and executive personnel under the terms and provisions of the General Agreement on Trade in Services (GATS), if the employee has worked abroad for the same group of companies for at least one year. However, the requirements regarding nationwide quotas and the conditions of work and salary apply. The following documents/information must be submitted for a transfer within the group of companies for highly qualified specialists:
 - reason for application (including information about the company, the project, the job and the foreign employee);
 - a written employment contract or an assignment contract/letter (including information about salary, allowances and/or coverage of expenses while in Switzerland);
 - a copy of a valid passport.

- All requests of citizens from non-EU/EFTA-countries must be submitted with substantiated evidence. This includes documents about work conditions (assignment letter or work contract), job description and information about the person (curriculum vitae, diploma and certification). The request must be submitted to the cantonal State Ministry of Economic Affairs and Employment. The State Ministry of Economic Affairs and Employment of the respective canton, the Federal Migration Office and the Migration Office of the respective canton then examine the documents. The request will only be approved if all three authorities agree.
- For citizens of countries that must have a visa (including the US), the Swiss representation (Embassy/Consulate) is authorised to issue a visa. After entering Switzerland, registration at the local residence office of the community where the employee will live must be made within 14 days if the residence lasts longer than three months.
- **EU-25/EFTA citizens.** These have a right to a work permit provided that an employment contract with a Swiss company has been concluded.
- Applications for (short-term) work and residence permits must be filed with the local authorities. A stay in Switzerland of an EU/EFTA-employee (or a non-EU/EFTA citizen that has been holding a valid EU/EFTA work permit for at least one year) of an EU/EFTA company for gainful activities for less than three months per calendar year can be registered online. Usually, the following documents must be submitted: passport copy, name and address of the employer in Switzerland, job title and project in Switzerland, start date, workdays and end of work, and hourly wage.
- The request is submitted and dealt with in the same way as for employees from non-EU/EFTA countries (*see above, Employees from non-EU/EFTA countries*).
- Employees must be registered at least eight days before they start work.
- Further, during a calendar year each company only has 90 days at its disposal to let its employees work abroad, independently of how many employees work on the same day(s) in Switzerland.
- **Citizens of Romania and Bulgaria (EU-2-citizens).** The regulations for EU-25/EFTA-citizens apply. However, it must be verified that no proper candidate could be found in Switzerland. In addition, EU-2-citizens must apply for a work permit for any gainful activities that exceed eight days per calendar year (not just after the 90-day period applicable to EU-25/EFTA-citizens). The following documents must be submitted:
 - an employment contract/assignment letter;
 - a job description;
 - a copy of the passport;
 - a passport photograph;
 - evidence that no proper candidate could be found in Switzerland;
 - a curriculum vitae with diplomas and credentials.
- The request is submitted and dealt with in the same way as for employees from non-EU/EFTA countries (*see above, Employees from non-EU/EFTA countries*).

Residence permits

In general, every foreign citizen who pursues remunerated employment in Switzerland that lasts longer than four months, or who is not visiting Switzerland as a tourist, requires a residence permit.

9. Are there any visa waivers or fast-track procedures available for foreign individuals entering your jurisdiction as investors?

Investors and entrepreneurs who maintain or create employment in Switzerland are exempted from the requirements to have special professional qualifications and favourable qualities relating to integration (for example, age or linguistic skills) (*paragraph 3, Article 23, Federal Act on Foreign Nationals (AuG)*).

10. What are the circumstances under which an individual becomes liable to pay tax in your jurisdiction? Can individuals be liable for tax on foreign-source income?

Residents

Individuals resident in Switzerland (that is, with a legal domicile in Switzerland or stay of at least 30 days (for employment reasons) or 90 days (without employment)) are fully liable to federal, cantonal and communal direct income and wealth (not on federal level) taxes on the basis of their worldwide income and wealth. However, income and wealth attributable to a foreign permanent establishment, a foreign business or real estate located outside Switzerland is unilaterally exempt.

Under the regime of lump-sum taxation, available in certain cantons only, a foreign individual resident in Switzerland may be taxed at the federal, cantonal and communal levels based on the actual cost of living. However, lump-sum taxation for foreigners is generally not available in the case of any Swiss-source income. The revised conditions on lump-sum taxation enter into force on 1 January 2016, which will increase the minimum requirements to 7x the annual rent paid (or imputed rental value) as taxable basis. In addition, at federal level, a minimum threshold of CHF400,000 will apply. The cantons must define minimum thresholds at their own discretion.

Non-residents

Individuals not resident in Switzerland are liable to federal, cantonal and communal direct income and wealth (not at federal level) taxes for income and wealth in relation to a Swiss employment, Swiss permanent establishment, Swiss business, Swiss real estate and dividends and interests on bank accounts only (*see also Question 7*). DTAs restrict the possibility to tax Swiss-source income.

INVESTMENT RESTRICTIONS

11. Are there any restrictions on foreign ownership and investment in specific industry sectors? Do any formalities, permit or notification requirements apply?

There are no significant restrictions. However, certain sectoral restrictions and formalities, and permit or notification requirements apply.

Banking industry

If a foreign investor holds directly or indirectly more than half of the voting rights of, or has otherwise a controlling influence on the bank, the Swiss Financial Market Supervisory Authority (FINMA) makes the granting of the banking licence conditional on additional requirements. In particular, the countries where the owners of a qualified participation in a bank have their registered office or their domicile must grant "reciprocity". This requires that Swiss residents and Swiss entities have the possibility to operate a bank in the relevant country and that these banks are not subject to more restrictive provisions compared to foreign banks in

Switzerland. However, this requirement does not apply to investors from a World Trade Organization (WTO) member state.

The granting of a licence requires that the corporate name of a foreign-controlled Swiss bank must not indicate or suggest that the bank is controlled by Swiss individuals or entities. Further, if the bank forms part of a group active in the field of finance, FINMA may request that the bank is subject to adequate consolidated supervision by a foreign supervisory authority.

Private insurance industry

Foreign investments into private insurance companies can trigger a notification duty. An investor intending to directly or indirectly acquire an interest in an insurance company with its registered seat in Switzerland must inform FINMA if its interest in the insurance company equals or exceeds 10%, 20%, 33% or 50% of the capital or voting rights. This provision includes not only shares but also non-voting participation certificates. The same notification requirements apply where a direct or indirect shareholder intends to reduce its interest below the thresholds or intends to change its participation in such a way that the insurance company is no longer a subsidiary. The notification must take place at the latest before the closing of the transaction.

Telecommunication industry

Foreign investments in the telecommunication industry are not limited other than the requirement that the home country grant reciprocity to Swiss firms. This requirement, however, does not apply to WTO member states.

Further, the Swiss Confederation is required by law to retain the majority of the capital and votes in the telecommunication firm, Swisscom AG (*Federal Act on the Organisation of the Telecommunication Firm*).

Radio and television industry

In the absence of any international obligations to the contrary, a legal person controlled from abroad, a domestic legal person with foreign participation or a natural person without Swiss citizenship may be refused a licence if the corresponding foreign state does not guarantee reciprocal rights to a similar extent.

Aviation industry

Majority ownership in and control over an aviation company must belong to Swiss citizens. In the case of a limited liability company, more than 50% of the share capital must be comprised of registered shares belonging to Swiss citizens or companies controlled by Swiss citizens. However, the requirement is subject to exemptions under international treaties.

Maritime shipping industry

There are certain residence and nationality requirements with regard to maritime shipping. For example, shareholders together representing more than half of the share capital of a Swiss maritime shipping company and owning together at least two-thirds of the voting rights, must be Swiss citizens who have their domicile in Switzerland. Further, legal persons holding an interest in a Swiss maritime shipping company must have their seat in Switzerland and be, with regard to their shareholders, participants, management and capital, "undoubtedly Swiss" (that is, the Swiss maritime company must be directly or indirectly controlled by Swiss citizens domiciled in Switzerland).

Gaming and gambling industry

If a foreign investment leads to the investor (in one person or a group of persons bound by voting agreements) holding more than 5% of the share capital or voting rights, this must be notified to the Federal Competition Commission (FCC).

Electricity industry

Foreign investments into Swissgrid are restricted because the majority of the capital and voting rights must belong directly or indirectly to the Swiss cantons and communities.

Further industries

There are restrictions in the form of domicile requirements with regard to hydroelectric, nuclear power, operation of oil and gas pipelines and transportation of explosive materials. Further, investment restrictions apply in sectors under state monopolies, such as railway transport services, some postal services, certain insurance services and commercial activities (*World Trade Organization: Trade Policy Review, Report by the Secretariat, 16 August 2013, Switzerland and Liechtenstein*).

Real estate industry

See *Question 13*.

Sanctions and embargos

There are certain sanctions and embargos to consider with regard to investments in certain industries and assets by nationals of certain jurisdictions or persons affiliated with certain organisations.

12. Does the government retain and exercise control over certain industry sectors? If so how?

The Swiss federal government is the majority (or sole) shareholder in companies in certain infrastructure sectors such as railways (Swiss Federal Railways SBB/CFF/FFS), telecommunications (Swisscom AG), and postal services (Swiss Post).

Although the electronic media (television and radio) sector is highly regulated at federal level, the government does not exercise control as a shareholder over the national media supplier (Swiss Broadcasting Corporation SRG SSR), which is organised as an independent association.

The federal government runs a number of higher education institutions, in particular the two Federal Institutes of Technology in Zurich and Lausanne. These institutions benefit from significant public funding, but there is no legal monopoly.

Additionally, the federal government established the Swiss National Accident Insurance Fund, which has a monopoly regarding accident insurance for employees in certain industry sectors.

The Swiss cantons are generally active in a number of different sectors, but the level of involvement varies from canton to canton. Usually, cantons are majority or sole shareholders in local or regional electricity providers, cantonal banks and cantonal hospitals. Some cantons also run their own cantonal universities and cantonal building insurance companies. Schools, local public transportation, water supply and waste disposal are usually operated or organised by the municipalities.

13. Are there restrictions on foreign ownership or occupation of real estate? Do any formalities, permit or notification requirements apply?

Non-Swiss persons require a governmental authorisation to acquire Swiss non-commercial property (that is, all real estate not used for trade or other commercial activities, such as residential property). These do not tend to be obtainable for mere investment purposes.

The acquisition of shares in a company holding non-commercial real estate is also generally subject to authorisation.

Non-Swiss investors are considered to be:

- Non-Swiss nationals (unless they are residents in Switzerland either holding a residence permit C or an EU national).
- Legal entities incorporated outside Switzerland and entities domiciled in Switzerland if they are directly or indirectly controlled by foreigners.

Authorisations to acquire regulated real estate are very rarely granted. Foreign investors are therefore basically precluded from acquiring residential property for investment purposes.

14. Are there any minimum capital requirements for foreign investment?

There are no minimum capital requirements for foreign investment.

15. Are there any exchange control or currency regulations? Are there any restrictions on the remittance of profits abroad?

There are no exchange control or currency regulations.

IMPORTS

16. Are there any restrictions on the importation of commercial goods and services?

In principle, commercial goods and services can be subject to the following import restrictions:

- Quantitative restrictions.
- Embargo measures.
- Licensing requirements.
- Restrictions on public procurement.
- Requirements of compliance with technical regulations, such as:
 - product standards, certificates, and so on;
 - labeling of products and conformity marks (for example, the CE-mark).

Goods

Switzerland is party to free trade agreements that govern the import of goods at global level, regional/European level and bilateral level (*see Question 6*).

Goods can generally be imported into Switzerland, if they either:

- Comply with foreign regulations that are subject to an international agreement.
- Are governed by Chapter 3a of the Federal Law on Technical Barriers to Trade (Cassis de Dijon) (*see Question 18*).
- Comply with Swiss regulations (for example relating to medicines, tobacco products and foodstuffs).

Some goods must be licensed by the government before being imported and placed on the Swiss market (for example, medicines, crop protection products and explosives).

Services

International trade in services is mainly governed by the General Agreement on Trade in Services (GATS) and the Agreement with the EU on the Free Movement of Persons. The basic principles are market access and national treatment, although import restrictions are possible.

Industrial safety standards and requirements of labour legislation must be met.

Financial products and services in particular

In principle, there are no restrictions on financial products and services as long as the provider (bank or securities dealer) does not operate branches or representative offices, or employ staff in Switzerland. A licence is required to operate branches or representative offices of foreign banks or securities dealers, under the respective federal statutes (Federal Banking Act, Ordinance on Foreign Banks and Federal Stock Exchange Act).

Foreign insurance companies must be licensed according to the Federal Act on Supervision of Insurance Companies for their insurance activities in Switzerland.

Foreign collective investment schemes distributed in Switzerland (and the persons who represent, manage or distribute those schemes), must be licensed in accordance with the Federal Act on Collective Investment Schemes.

17. What import duties apply to commercial goods and services?

The import of commercial goods and services can be subject to the following duties:

- **Custom duties.** Regular custom duties are due on the import of goods as defined by the Federal Act on Custom Duties, depending on the nature of the good and the imported quantity.
- **Tariff quotas.** The import of some agricultural goods requires a general import licence. In addition, there are tariff quotas for some agricultural products for a specific quantity at a reduced rate of duty under certain conditions. The import quantity at the full rate of duty is not restricted (but the duty is usually prohibitive).
- **Value added tax (VAT).** As a general rule, Swiss VAT at the rate of 8% is due on all goods and services that are imported into Switzerland (*Federal Act on Value added Tax*). However, the receiving party must pay the VAT, not the importer.

Switzerland has signed several free trade agreements, not only with the EU and EFTA but also with other countries, granting tariff preferences (duty-free or reduced tariff rates).

There are special duties on specific goods (for example, on automobiles, tobacco, mineral oil and alcohol).

18. Are the safety regulations and standards applicable to commercial goods and services in your jurisdiction compatible with other standards that are recognised internationally?

A good can be imported into Switzerland and placed on the market if it complies with foreign technical standards or regulations that are subject to either:

- An international agreement (such as the agreements with the EU/EEA and Canada).
- The "Cassis de Dijon" principle of the Federal Law on Technical Barriers to Trade.

According to the Cassis de Dijon principle, goods can be placed on the market if they comply with the technical regulations of either the:

- EC (or a member state of the EC where harmonisation within the EC is incomplete or missing).
- EEA.

Additionally, the good must be legally marketed in the respective EC or EEA member states.

The Federal Law on Technical Barriers to Trade and the Ordinance on Marketing and Supervision of Products made under Foreign Regulations specify some categories of goods that are excluded from the scope of the Cassis di Dijon principle. In these cases, Swiss technical and licensing requirements must be met (*see Question 16*).

STRUCTURING AND TAX

19. How is foreign investment into your jurisdiction typically structured? What forms of legal vehicle are attractive to foreign investors?

A predominant form of foreign investment is through a Swiss or foreign holding company. In the case of a foreign holding company, the company is generally tax resident in a jurisdiction benefiting from a full or partial refund on Swiss withholding tax (such as Luxembourg, the UK and Ireland).

Holding companies are exempt from cantonal and communal income taxes, and pay a reduced capital tax.

At federal level, a tax reduction is available for qualified dividends and capital gains (participation relief). The participation relief is available in the following cases:

- The participation comprises at least 10% of the held company's capital.
- The participation entitles the holder to at least 10% of the profit and the reserves by the held company.
- The participation has a market value of at least CHF1 million.

20. What are the circumstances under which a business becomes liable to pay tax in your jurisdiction?

Generally, a business is tax liable in Switzerland, if either:

- It has its seat or place of effective management in Switzerland.
- There is an economic connection to Switzerland such as a permanent establishment, real estate or Swiss related business activities performed in a fixed place of business.

Foreign resident companies with a business in Switzerland pay taxes on Swiss-source income only.

21. What are the main business tax rates?

VAT

VAT applies at:

- 8% on most goods supplied and nearly all services.
- 2.5% on basic necessities, such as food and drink (excluding alcoholic drinks), medicines, and certain newspapers, magazines and books.
- 3.8% on overnight stays including breakfast.

Stamp tax on issuance of shares

Shares issued in connection with the establishment of a Swiss company are subject to Swiss stamp tax at 1% on the fair market value of any capital contributed over CHF1 million.

Securities transfer tax

The sale of taxable securities results in a 0.15% (for Swiss securities) or 0.3% (for foreign securities) securities transfer tax, if a professional securities dealer under Article 13 of the Stamp Tax Duty Act is involved in the transaction.

Direct income and capital taxes for corporations

Corporations are subject to a federal income tax of 7.83%. At the cantonal and communal level the corporate income tax varies from canton to canton, and from community to community. Communal taxes are as a rule based on a multiple of the cantonal tax. The effective income tax burden at the cantonal and communal levels ranges from as low as 11.22% in Meggen (canton of Luzern) up to 24.90% in Genthod (canton of Geneva). Further, there is a capital tax at the cantonal and communal levels effectively ranging from 0.525% in Basel (canton of Basel-City) to as low as 0.001% in Uri (canton of Uri).

Withholding tax

Withholding tax is levied on dividends distributed by Swiss resident companies at a rate of 35%.

22. What is the tax treatment in your jurisdiction of profits from an investee company remitted outside your jurisdiction by an investor?

Profits remitted abroad as dividends are subject to Swiss withholding tax (WHT) at 35%. Swiss WHT can be reclaimed in part or in full under a respective double taxation treaty or the EU savings agreement. However, there is a procedure to fulfil the tax liability by reporting the dividend, if the reporting procedure is admissible in the particular case, subject to a preliminary authorisation by the Swiss Federal Tax Administration.

Generally, under Swiss double taxation treaties, dividend payments to tax exempt foreign pension funds are exempt from Swiss WHT.

23. What transfer pricing and/or thin capitalisation restrictions may apply to investments into your jurisdiction from elsewhere?

Transfer pricing

Switzerland does not have specific transfer pricing provisions in its tax acts. However, a provision under which commercially not justified expenses are added to the taxable profits applies (*Federal Tax Act* and *Tax Harmonisation Act*). To be commercially justified, a transaction must serve a business purpose and be at arm's length. Transactions between related persons that are not at arm's length constitute a hidden profit distribution to the shareholder or related person. There is extensive case law on hidden profit distributions.

In addition, the Federal Tax Administration issued circular no. 4/2004, under which the OECD Guidelines must be considered when taxing multi-national enterprises. The OECD Guidelines even apply in relation to countries that are not OECD member countries. If it can be demonstrated that a transaction is at arm's length according to the OECD, the federal and cantonal tax administrations must accept the conditions of the transaction.

Thin capitalisation rules

The Federal Tax Administration's Circular letter no. 6 contains thin capitalisation rules. The following applies:

- As a rule, for financing companies, non-equity positions are admissible up to 6/7.

- In all other cases, the maximum allowed debt depends on the rates defined by the Swiss Federal Tax Act (SFTA) with regard to the underlying asset category:

- cash and cash equivalents: 100%;
- accounts receivable: 85%;
- other receivables: 85%;
- inventories: 85%;
- other current assets: 85%;
- domestic and foreign bonds in CHF: 90%;
- foreign bonds in foreign currency: 80%;
- listed domestic and foreign shares: 60%;
- non-listed domestic and foreign shares: 50%;
- participations: 70%;
- loan receivables: 85%;
- property/equipment: 50%;
- factory premises/plants: 70%;
- home property and construction land: 70%;
- other real estate: 80%;
- goodwill: 70%.

Tax consequences

The following tax consequences apply:

- Accrued or paid interest on loans qualifying as undisclosed equity does not decrease the taxable profit (that is, the taxable profit will be rectified).
- Interest paid in excess, not conforming to the third party test is considered a constructive dividend and subject to Swiss WHT at 35%. This is fully refundable under domestic law or fully/partially under a DTA or the EU savings agreement.
- Undisclosed equity is subject to the cantonal capital tax.

INCENTIVES

24. What tax incentive or other schemes exist to encourage foreign investment?

Tax holidays for new or additional businesses

Tax holidays can be granted at federal and cantonal levels for new businesses, as well as for the creation of additional businesses, for a maximum of ten years.

If it is in the economic interest of a canton, that canton may allow for tax holidays within the year of the establishment of the new business or additional business, and for the subsequent nine years. A significant change of business may be treated in the same way and can qualify as the establishment of a new business in a canton. The canton's discretion is wide: in some cantons the respective tax holiday granted may lead to the profits being almost completely tax exempt.

At federal level, tax holidays are also available, but only in certain regions. The threshold is set higher as the respective business must be of economic relevance for the whole region. Therefore, not every new or additional business that is granted a tax holiday at the cantonal level is able to obtain a tax holiday at the federal level.

Special tax regimes

For certain activities, special tax regimes (holding company and mixed company regimes) at the cantonal and communal levels are

available (the latter leading to an effective tax rate of around 10%). However, Switzerland will amend these regimes over the next few years due to pressure from the EU and the OECD.

INVESTMENT GUARANTEES

25. What legal guarantees exist against expropriation and/or provide for appropriate compensation? What is your government's track record in this regard?

Property rights are guaranteed under Article 26 of the Federal Constitution. In addition to real estate and movables, this guarantee also covers intellectual property rights, contractual rights and obligations, as well as some rights under public law.

Expropriation is only permitted if all of the following apply:

- There is a clear and distinct basis in a (federal or cantonal or municipal) statute.
- The restriction of the property right is justified in the predominant public interest.
- The restriction is proportionate.

If these conditions are met, the property owner must receive full compensation in exchange. As a general rule, the Swiss Supreme Court held that the amount of compensation is assessed primarily based on the property's full market value. The procedure of expropriation is governed by specific federal or cantonal statutes that also provide judicial review both with regard to admissibility and valuation.

If the governmental measure does not cause the total loss of property but only restricts its use, the measure generally does not give rise to a claim for compensation (as long as the restriction is lawful). However, if the restriction is particularly far-reaching and is therefore equivalent to expropriation, the owner can claim compensation and request that the government acquires the respective property against payment of its full value. A restriction of ownership that is equivalent to expropriation is present if the owner can no longer use his property in an economically sound way. Further, even if the restriction of ownership is less important, the owner has a claim for compensation if he is singled out and no other owners in similar circumstances are affected by the respective governmental measure. The loss of the real estate property's economic value giving rise to a claim for compensation may be present, in particular when all construction is prohibited or in cases of particularly strict preservation orders.

Switzerland has not performed extensive expropriations with regard to certain industries or regions of the country. There are very few examples of expropriation for reasons of economic or industrial policy. Rather, previously government-owned industries such as telecommunications and postal services have been privatised and opened to (regulated) market participants. Expropriations have mainly been made to build large infrastructure projects such as railways, highways, power stations or military sites, and so on, on private ground.

26. Are there any issues in relation to the enforcement of intellectual property rights?

Swiss law recognises various intellectual property rights such as patent rights, rights in trade marks and designs, and copyrights. These rights are governed by federal statutes and international agreements. There are no particular issues regarding enforcement. In general, the standard of protection of intellectual property rights is very high.

With the establishment of the Federal Patent Court in 2012 (a court of first instance in matters dealing with patents), there is one single

judicial institution for all civil actions related to patents, with exclusive jurisdiction in patent infringement and validity matters. The Federal Patent Court's decisions can be challenged directly before the Federal Supreme Court.

Apart from patent law cases, intellectual property rights cases must be brought before the ordinary cantonal courts.

In the case of expected violations of intellectual property rights, the courts can order preliminary measures.

27. Are there any issues in relation to the gaining and enforcement of judgments and/or arbitral awards?

Switzerland is a party to the Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Lugano Convention). The Lugano Convention entered into force in 1988 and was replaced by a revised version in October 2007. It is, in essence, the equivalent of the Brussels Regulation on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters. Switzerland is also a party to several bilateral treaties on recognition and enforcement in civil and commercial matters entered into with various countries, such as Germany, Austria, Belgium, Spain, Italy, Liechtenstein and Sweden.

The Lugano Convention provides for broad recognition and enforcement of judgments rendered in a member state. However, in the absence of an applicable treaty, recognition and enforcement of foreign judgments in Switzerland is governed by the Swiss Private International Law Act (PILA). Further, Switzerland made a reservation to the Lugano Convention in relation to judgments rendered *in absentia*. These judgments are not recognised if the defendant was not served with the document instituting the proceedings, or with an equivalent document, in sufficient time and in such a way as to enable him to prepare his defence.

Switzerland takes a very formal approach regarding the proper service requirement. For example, any notice occurring at any stage of the foreign proceedings that does not meet the requirements of the Hague Convention of November 1965 on the Service of Judicial Documents Abroad, to which Switzerland is a party, may trigger issues when it comes to the judgment's recognition and enforcement in Switzerland.

Switzerland is also a party to the New York Convention of June 1958 on the Recognition and Enforcement of Arbitral Awards (New York Convention). Recognition of foreign arbitral awards does not trigger any particular issues in Switzerland, which is widely recognised as an arbitration friendly forum. The Swiss Federal Supreme Court adopts a very narrow interpretation of public policy and refrains from re-examining the merits of foreign arbitral awards.

It should also be emphasised that the Swiss "blocking statutes" may constitute a risk for a party that intends to seek recognition or enforcement in Switzerland. Service of judicial acts in Switzerland is deemed an official task. Therefore, an attempt to serve a party on Swiss soil, outside the scope of any formal/legal proceedings (such as mutual legal assistance proceedings), may constitute a criminal offence within the meaning of Article 271 of the Swiss Criminal Code. This provision in principle also applies to arbitral proceedings, unless the parties involved and the arbitral tribunal have, for example, reserved the tribunal's possibility to proceed with direct service on Swiss territory.

RECENT DEVELOPMENTS AND PROPOSALS FOR REFORM

28. Have there been any significant recent or proposed legal developments affecting investors?

Switzerland will abolish certain tax regimes (holding company, mixed company, finance branch and principal company regimes) due to pressure from the EU and the OECD. These will be replaced by reducing corporate tax rates in general and introducing new acceptable regimes (corporate tax reform III).

It is expected that an IP-box will be introduced at the cantonal level via the Tax Harmonisation Act, which will allow cantons to separately tax profits from IP rights at a reduced tax base of at least 20%. Although not entirely clear, yet, it is expected that a Swiss permanent establishment of a foreign legal entity will also be able to qualify for the new regime, as this is currently the case for special tax regimes at the cantonal level. This interpretation is in line with the current existing regime in the Canton of Nidwalden as well as with the existing UK IP-box. With this measure the overall tax burden on profits from IP rights is expected to be around 10%.

To benefit from the new regime, the company must have contributed significantly to the development of the respective IP rights. Therefore, early planning regarding the structuring is recommended. Additionally, it is planned to allow companies that currently benefit from a special tax regime at the cantonal level a step-up in order to ease the effects of the tax regime change. Therefore, when the special tax regimes finish the respective companies will be allowed a tax neutral revaluation of their assets. For former holding companies there is no change expected for participation relief at the federal level. At the cantonal level profits will be subject to tax; however, the currently available participation relief at the cantonal level will lead to a de facto tax exemption of profits derived from participation at the cantonal level. The new legislation is not expected to become effective before 1 January 2019 and foresees a transition period of five years. Therefore, established special tax regimes at the cantonal level before 1 January 2019 should stay in place until 1 January 2024.

29. Are there any planned or on-going treaty negotiations or political developments that could have an impact on your jurisdiction's bilateral relationships with other nations and/or other economic, customs or monetary unions, free-trade areas or markets?

Switzerland is currently engaged in negotiations within the EFTA regarding the entering into new FTAs with several countries such as Algeria, India, various Central America states, Thailand, Indonesia, Vietnam and Malaysia.

Switzerland is also an active participant in negotiations regarding a Plurilateral Trade in Services Agreement (TISA). The purpose of the TISA is to conclude a comprehensive agreement on trade in services, based on the model of GATT. The idea of a TISA was launched by the US and a group of WTO member states meet regularly in Geneva under the common chairmanship of the US, Australia and the EU.

The negotiations between Switzerland and the EU regarding the *Bilatérales 3* (see *Question 7*) have been put on hold since the acceptance in February 2014 of the popular initiative against mass immigration. The purpose of the initiative is, in essence, to limit immigration into Switzerland by introducing quotas. It also calls for the renegotiation of the agreement for free movement with the EU. The Swiss Federal Council is at present working on the initiative's implementation from a legislative perspective, which is to occur within three years of the people's vote. The consequences of the initiative on future co-operation between Switzerland and the EU, in particular in the areas of research and education, are unclear. Switzerland is currently holding talks with the EU on a solution to apply the initiative against mass immigration without jeopardising the existing *Bilatérales 1* and *2*.

Switzerland also recently changed its policy regarding the automatic exchange of information in international tax matters. In July 2014, the OECD published and adopted the norm regarding the automatic exchange of information of financial accounts in tax matters. It is expected that Switzerland will apply these new standards on automatic exchange of information from 2018.

MAIN INVESTMENT ORGANISATIONS

Switzerland Global Enterprise (formerly known as *Schweizerische Zentrale für Handelsförderung* respectively *Office Suisse d'Expansion Commerciale*)

Main activities. Switzerland Global Enterprise is commissioned by the Swiss government to gather the mandates of export, location and import promotion under one roof. It fosters exports, imports and investments, helps clients develop new potential for their international businesses and strengthens Switzerland as an economic hub.

W www.s-ge.com

Zurich Chamber of Commerce (*Zürcher Handelskammer*)

Main activities. The Zurich Chamber of Commerce pursues the goal of liberal conditions for the economy characterised by free enterprise. Its operations are geared towards providing support at all levels with a view to retaining and increasing the attractiveness of the regional economic location.

W www.zhk.ch

Chamber of Commerce of both Basels (*Handelskammer beider Basen*)

Main activities. The organisation represents the interests of companies in Basel-City and Basel-Land.

W www.hkbb.ch

The Geneva Chamber of Commerce, Industry and Services (*Chambre de commerce, d'industrie et des services de Genève*)

Main activities. The Geneva Chamber of Commerce promotes a strong economy, conducive to local businesses sustaining their activities long-term.

W www.ccig.ch

ONLINE RESOURCES

Switzerland Global Enterprise

W www.s-ge.com

Description. This website is maintained by Switzerland Global Enterprise, which has been commissioned by the Swiss government to gather the mandates of export, location and import promotion under one roof. The information on this website is up-to-date.

Swiss State Secretariat for Economic Affairs

W www.seco.admin.ch

Description. This website is maintained by the Swiss State Secretariat for Economic Affairs. The information on this website is official and up-to-date.

Swiss National Bank

Description. This website is maintained by the Swiss National Bank. The information on this website is official and up-to-date.

W www.snb.ch

Business and Development Division of Zurich

W www.awa.zh.ch/internet/volkswirtschaftsdirektion/awa/en/standortfoerderung.html

Description. This website is maintained by the Business and Economic Development Division of the canton of Zurich. This division is a point of contact for companies from Switzerland or abroad interested in relocating in the canton of Zurich. The information on this website is official and up-to-date.

Economic development of Basel-City

W www.awa.bs.ch/en/standortfoerderung.html

Description. This website is maintained by the canton of Basel-City. The website promotes economic development in Basel-City. The information on this website is official and up-to-date.

Geneva Economic Development Office

Description. This website is maintained by the Geneva Economic Development Office. The website aims to highlight Geneva's advantages from a business point of view, and provides useful information to both international and local companies and entrepreneurs. The information on this website is official and up-to-date.

W www.whygeneva.ch

Canton of Zug website

W www.zg.ch/behoerden/volkswirtschaftsdirektion/economic-promotion

Description. This website is maintained by the canton of Zug. The website promotes Zug as residential region and business location. The information on this website is official and up-to-date.

Practical Law Contributor profiles



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Areas of practice. Banking; finance; capital markets.

Recent activities

- Regularly advises Swiss and foreign banks and securities dealers on transactional and regulatory matters.
- Often involved in M&A transactions and complex financings, advising both lenders and borrowers.

Non-professional qualifications. Associate Professor, University of Geneva; Dr. iur., University of Geneva; LL.M., Harvard Law School

Languages. English, French, German

Professional associations/memberships. Associate professor at the University of Geneva, teaching corporate and capital markets law; member of the executive committee of the Center for Banking and Financial Law and of the committee of the LL.M. course in Banking and Finance, both at the University of Geneva; appointed as an expert member of the working group of the Federal Department of Finance responsible for the drafting of a new Federal Act of Financial Services (FIDLEG).

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Publications. Regularly publishes on topics within specialisation.



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Non-professional qualifications. Lic. iur., University of Fribourg; Civil and Law Notary in the Canton of Zug; LL.M., University of Toronto

Languages. German, English, Dutch

Publications. Regularly publishes on topics within specialisation.