

Switzerland is an attractive location

Switzerland is a highly attractive place for establishing companies of international groups. Despite the current reforms in our tax regime (see separate text box below) it remains a highly attractive place for holding or IP companies. Tax rates remain comparably low and Switzerland maintains double tax treaties with a high number of countries. And for operational companies there are much more advantages than just low tax rates:

- a politically and economically stable environment;
- quick access to other European countries and the World through its central location in Europe;
- availability of highly educated personnel (from Switzerland and abroad);
- network of a massive number of global and international companies;
- a nice place to take the family and children (with international schools and highly ranked universities);
- English language commonly used.

Corporate Tax Reform III – an update

The new corporate tax law is likely to be introduced in 2019. However, the next big hurdle in a complicated political process is a referendum (*Volksabstimmung*), taking place most probably in February 2017. Should the public voting be positive the Cantons would have time to implement the respective changes by the end of 2018. Although we know the law changes, there is still the basic uncertainty about the actual adoption.

The good news for all is that Cantons have already started a competitive run to lower tax rates. Zurich plans to decrease total tax burden from 21.1% to 18.2% with further possibilities to lower it to 10.1%, depending on the benefits from the new instruments. Geneva will reduce from 24.2% to 13.0% and Zug aims to lower it to 12%, with further benefits even below 10%.

And these are the main instruments for Companies to reduce the tax rate towards the minimum:

- ✓ The *patent box* provides an incentive for R&D and value-adding innovation activities and introduces a tax privilege on revenues from intellectual property rights up to 90%. However, following the OECD nexus approach, the patent box rules are rather restrictive.
- ✓ Therefore the tax reform includes an additional *special deduction for R&D costs*. Cantons may weight tax-deductible R&D costs incurred in Switzerland up to 150%.
- ✓ After controversial debates the reform package finally also includes a *notional interest deduction* on surplus equity exceeding the minimum required core capital.

Except for the patent box, which follows the restrictive nexus approach, the exact definitions and calculation schemes are not yet known. The law provides that the reduction may not exceed 80% in total. Nevertheless, the net tax exposure can be significantly reduced by companies with considerable R&D costs or highly equity financed companies.

Director services for companies established in Switzerland

A director of a company in Switzerland must be able to provide the following as detailed further below: compliance, tailored governance, local experience, out-of-the-box-thinking and a systematic approach.

Compliance – Nothing to discuss, being compliant is a need. Although Swiss law is very business friendly there are many things to know and to be compliant with. Therefore the law requires a Swiss-domiciled person to represent the company.

For example, it is important to know how to correctly and efficiently set-up an organization; which social security contributions are due in a situation; what taxes may be triggered by a specific transaction; how to deal with Swiss customs authorities; how to present leasing arrangements in statutory financial statements; etc. etc. There are many situations in which local know-how should be promptly available within a company.

Of course, there is no single omniscient person who knows every detail in all laws and regulations. But a director must have wide experience and particularly be sensitive enough to understand all situations that may require additional clarifications. And he must have a wide network of experts in all possible fields.

Relevant Swiss Law – a summary

The Board of Directors of a Swiss corporation must at least have one member (art. 707 CO) and manages the company's operations, unless the responsibility is delegated to a manager/management team (art. 716 CO). Art. 716a CO lists certain important duties of the board of directors that are not transferable and inalienable. A company must be represented by one person who is a Swiss resident, either a member of the board of directors or an executive officer (art. 718 CO). Legal practice has continuously increased the demands on board members and directors according to art. 754 CO – liability for administration, business management and liquidation.

Tailored Governance - Governance is the direction of a company. It includes the setting of processes, policies, rules and customs affecting the way people direct, administer and control an organization. That's theory. In practice it has many more facets and looks different in each situation. It means that all aspects of a company must be understood and assessed for potential issues or risks. The most effective and efficient governance approach is highly individual and unique. Finding it requires a good measure of judgement and experience.

For Holding or IP companies governance also means to actually manage a company. A director then becomes the local general manager, who is available at all times but employed only part-time.

Hans-Peter Wyss' director engagements

- *NBK Banque Privée (Suisse) S.A.*, Geneva (wealth and investment management) – member of the board of directors
 - *Senn Chemicals AG*, Dielsdorf (pharmaceutical CMO production) – member of the board of directors
 - *Canada Goose International AG*, Zug (luxury apparel sales organization) – president of the board of directors
 - *Angiotech International AG* and *Angiodevice International GmbH*, Zug (medical IP) – member of the board of directors/managing director
- In addition, Hans-Peter Wyss is a member of the cooperative board of *Migros Genossenschaft Zürich*, the Swiss #1 retailer.

Local Experience – Also in international business it is crucial and vital to have local experience. For example, a company is not able to hire the appropriate manager or staff person if it is not familiar with the respective local industry, local professional education systems and the labor market; a company may significantly overpay rent for premises if it is not familiar with the highly fragmented real estate market; a company may not be able to engage the best advisor for a specific problem if it has never experienced several potential advisors; administrative costs for accounting, audit, legal advice etc. may explode if not properly managed and monitored. There are so many decisions for which local experience really is more than just nice to have.

Out-of-the-Box-Thinking – Industry experts with deep, specific industry knowledge and experience are needed in every boardroom. So are generalists. Their experience from a number of companies allows them to take a much broader view – out-of-the-box. Their cross-industry know-how may be experienced as valuable asset in situations where a body is looking for alternative ways and different solutions. The obvious solution may not necessarily be the best. Directors should not sell concepts, which currently are fashionable, but find the solution that really fits.

Systematic Approach – Creativity is an important asset. However, it finally needs to be turned into something real. For this it's not wrong to apply a systematic approach. Especially when acting as sole local director, a systematic and organized leadership approach is highly valued.

«You may be sure that I'd be able to provide to you all this. Please do not hesitate to contact me directly on hwyss@fcscompany.ch or +41 79 430 9975», Hans-Peter Wyss



Tremola, the old pass road over the Gotthard massif – photographed by Berthold Steinhilber