Switzerland

*Walter Meier**

I. INTRODUCTION[1]

1. COMPANY LAW

1.a. Swiss Company Law has remained basically unchanged since 1936. It is a *very liberal law based upon classical concepts* and has not been influenced by modern tendencies to give power to third parties such as employees, labour unions or governmental agencies.

The law of the joint stock corporation ('Aktiengesellschaft' or 'AG'/'Société anonyme' or 'SA') is drafted very flexibly so that the form of the joint stock corporation can be adapted by by-laws and contracts to the specific purposes of the shareholders. In particular the Anglo-American One Board system can be provided for as well as the German system of a Managing and Supervisory Board.

During the last twenty years, there have been discussions on the necessity of revising the law governing the Swiss joint stock corporation. Although the deliberations in Parliament have not yet finished, it now seems likely that amendments will come into effect in the early nineties. Their goal is primarily the provision of better protection for small and minority shareholders and better information relating to a corporation's financial situation, the imposition of extended duties and qualification requirements on auditors, more flexibility in the capital basis of corporations and, finally, detailed regulation of non-voting profit sharing certificates. However, the basic concept of the present legislation will not change. Of the

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suggested amendments, the more important ones will be discussed below.

1.b. Although there are several forms of business organizations in Switzerland the *joint stock corporation is virtually the only one used by foreign investors*. It is by far the form which is most preferred by Swiss investors and business men.

The joint stock corporation *serves the purposes of both the privately held as well as the publicly held entity*. While it is true that in Swiss law the limited liability company ('Gesellschaft mit beschränkter Haftung' or 'GmbH'/'Société à responsabilité limitée' or 'Sàrl') exists, it is rarely used. The joint stock corporation typically is used for the same purposes for which the limited liability company is used in the Federal Republic of Germany.

The overwhelming importance of the joint stock corporation is illustrated by the fact that today more than 145,000 joint stock corporations exist in Switzerland (compared to only about 2,000 in the Federal Republic of Germany), whereas only some 3,000 limited liability companies are registered in Switzerland.

The following survey therefore deals almost exclusively with the joint stock corporation.

2. TAXATION LAWS

2.a. Switzerland is a Federal state (Confederation) of 26 cantons (or half-cantons) and some 3,000 municipalities. In the past each canton has been fully sovereign. Today the cantons still enjoy a remarkable degree of political and fiscal sovereignty. Federalism and regional socio-cultural individualism continue to play an important role and therefore are a reality in Switzerland's everyday life.

The Swiss tax system is a mirror of Swiss federalism. The major taxes are levied at three levels of Government: Confederation, cantons and municipalities (in a few cantons even the districts are entitled to impose taxes). Unlike other federalistic countries, the cantonal and municipal income taxes ordinarily represent a heavier burden for the Swiss taxpayer than the Federal income tax.

2.b. Each canton has its own tax code with sometimes quite different rules on the determination of the tax base, exclusions, deductions, rates, and the like which enormously complicates the taxation system. Also within a specific canton the tax rates may vary considerably depending on the rate of the applicable municipal tax. The

cantonal and municipal tax rates may periodically be adjusted to conform to budgetary needs.

2.c. A concrete project has been made formally to harmonize the Federal and cantonal tax codes (the rates and allowances would, however, remain at the discretion of each tax jurisdiction). Due to differing opinions on some issues and the relatively slow pace of the political and legislative process in Switzerland, it is difficult to predict whether and when this will be realized.

II. THE LEGAL FRAMEWORK

A. The Vehicle

1. THE WHOLLY-OWNED ENTERPRISE

1.a THE BRANCH[1]

I.a.(i) Setting-up a branch of a foreign enterprise in Switzerland

1.a(i)1. The registration of the *first* Swiss branch of a foreign company corresponds to the registration of a Swiss main office with regard to form and content.

This means that the *application* for registration must *contain the following information*:

- the date of the Articles of Association,
- the name and registered office of the company,
- the object and purpose of the company and its duration if the Articles of Association contain a provision referring to this point,
- the par-value of the share capital as stated in the Articles of Association, the amount paid in the par-value of each share,
- the classes of shares, whether registered or bearer shares, and any preferential rights benefiting a particular class of shares,
- the identity and value attributable to contributions in kind and the nature and value of any benefits attributed to the founders of the company,
- the manner in which the company is to be represented,
- the names, addresses and nationality of the members of the Board of Directors and the persons authorized to represent the company,
- the form in which the company's official statements are published and, if provided in the Articles of Association, the form in which communications are to be made by the Board of Directors to the shareholders. (Information regarding the form and publication of such official statements need not be given if the foreign law under which the company is formed does not require such provisions.)

1. The survey deals only with Swiss branches of *non-resident* enterprises.

The application shall be *made by the Board of Directors* of the company. If The Board of Directors consists of more than one person, then the Chairman of the Board or his deputy and the Secretary or a second member of the Board of Directors must sign the application.

The application *must be accompanied by the following documents*:
- an excerpt from the Commercial Register in the district of the main office or – if there is no Commercial Register there – an official document (e.g. a 'Certificate of Good Standing') confirming the regular existence of the company (according to the law where the main office is situated). This document must imply that the company corresponds in substance to a Swiss joint stock corporation and that it is a legal entity according to the law at the place of its main office;
- if the document mentioned heretofore does not refer to the paid-in capital, then a notarized certification of the amount of the paid-in capital must be enclosed;
- a copy of the Articles of Association ('Statuten'/'statuts'), which must be certified by the Commercial Register at the place of the main office, by another governmental authority or by a notary public;
- the application must contain a notarized certification of the family names, first names, place of domicile and nationality (in case of Swiss citizens their place of citizenship) of all members of the Board of Directors or notarized excerpts from the minutes of the election of the Board;
- an excerpt of the minutes of the competent organ of the company authorizing the creation of the branch, specifying the person or persons authorized to represent the branch and approving the manner in which they will sign for it (individually or jointly);
- since a branch must, according to Swiss law, have a certain independence (competence to engage in its own business, its own management, separate accounts and recording), the Commercial Register usually requires some evidence in this regard;
- if the branch has no office of its own at the place of its location, then the application shall indicate with whom it is domiciled at such location. In this case, a written confirmation by the person or company with which the branch shall be domiciled is requested.

If the documentation is in a foreign language, it must be *translated*. The translation should be certified by a sworn translator or by a private person who fully masters both languages.

The documents are to be *legalized* by a diplomatic representative of Switzerland or, in the case of countries which have adhered to the

Convention Abolishing the Requirement of Legalization of Foreign Public Documents dated 5 October 1961, to be accomplished by a Certificate (Apostille).

1.a.(i)2. If the foreign Company already has a branch in Switzerland, then *further branches* must be registered in the *same way as branches of Swiss companies*.

This means that the *following information must be filed* with the Commercial Register for the canton or district in which the new branch is located:

- the legal nature, the name and the place or residence of the main office,
- the statement that the main office is registered in the Commercial Register at the place of its residence (provided that a Commercial Register exists at the place of such residence),
- the name and the place of residence of the branch,
- the nature of the business or the purpose of the company,
- special provisions which only apply to the branch,
- the persons authorized to represent the branch, together with any provisions limiting their signatory power to the scope of business of the branch (if such limitations exist) and their method of signing,
- the business address of the branch.

The formation of the new branch must also be registered in the Commercial Register at the place of the first branch.

1.a.(i)3. The *business name* of the Swiss branch of a foreign company must comply with the requirements of the applicable foreign law. In addition the name of the Swiss branch must comply with the Swiss law on business names. In particular misleading names and terms that serve only advertising purposes are prohibited. Territorial and regional additions are authorized as business designations only if they are justified by special circumstances.

Moreover, the company name of the branch must be clearly distinguishable from any company name already registered in Switzerland.

Basically, the branch must use the *same company name as that of the main office* and it must contain the location of the main office, the location of the branch and its specific designation as a branch. Further, branches may make additions to the company name if these additions apply only to the branch.

1.a.(ii) Organization of the branch of a foreign enterprise in Switzerland

1.a.(ii)1. A duly authorized *Swiss resident having authority to represent the Swiss branch* must be appointed. The authorized person need not be a Swiss citizen. The authorization implies ex lege all legal acts that may arise within the scope of the company's purpose. The authorization may be limited, however, to the scope of the branch office's business.

1.a.(ii)2. The registration of a branch confers *jurisdiction over the business activities of such branch* on the court of the branch's location in addition to the jurisdiction of the court where the main place of business is registered.

With regard to the branch's liabilities, the *Swiss branch is subject to Swiss bankruptcy proceedings* which have to be instituted at the registered location of the branch. However, divergent clauses in international treaties remain reserved, such as the one in the convention which Switzerland entered into with France in 1869 (Convention entre la Suisse et la France sur la compétence judiciaire et l'exécution des jugements en matière civile).

Bankruptcy proceedings at the location of the main office do not embrace the assets of the Swiss branch.

1.a.(ii)3. According to Swiss law, the *legal entity as a whole is liable* for legal acts as well as for damages for unlawful acts committed within the scope of the business of the branch.

Whether Directors are personally liable can be decided either according to the law governing the legal entity as such or according to Swiss law. According to Swiss law all Directors, managers or auditors are responsible to the company as well as to the individual shareholders and creditors of the company for any damages caused intentionally or negligently by a breach of their fiduciary duty. However, claims of shareholders and of the company's creditors are restricted or impossible as long as the company or its branch has not been declared bankrupt.

1.a.(ii)4. *Accounting* and *auditing* requirements must be in accordance with the law governing the company. No publication of accounts is required.

1.b THE SUBSIDIARY

As mentioned before, no differentiation is made between the privately and publicly held company. For both of them the form of the joint stock corporation is used, although Swiss law provides also for the form of the limited liability company.

1.b.(i) Incorporation

1.b.(i)1. At the time of incorporation there must be at least *three shareholders* who have subscribed for the whole amount of share capital. (Immediately after registration, however, the shares can be held by only *one shareholder*). The *minimum initial share capital* is 50,000 Swiss francs of which at least 20 percent or 20,000 Swiss francs (whichever is greater) must be deposited in an escrow account before the company can be incorporated.

The incorporation meeting takes place in the presence of a notary public. The company then must be *registered in the Commercial Register.*

1.b.(i)2. A special detailed *written report* must be issued by the founders if some or all of the shares are paid for by *contributions in kind.*

However, there is no requirement of an official or private appraisal of such contributions in kind; the philosophy of the law is that such contributions should be made publicly known by reference in the Articles of Association and by the report, but that it is up to the creditors or potential shareholders to decide whether or not the value attributed to such contributions is adequate.

1.b.(i)3. The above mentioned rules apply to *incorporations in one act.* There are specific rules for *incorporations by successive subscriptions* which attempt better to protect the investing 'outside' shareholder. However, since virtually all incorporations take place in one act, these rules are rarely applicable. In fact in order to form a widely-held company, a bank or related company usually subscribes to all of the shares and then resells these shares to the ultimate shareholders. If this procedure is applied then the rules for incorporations by successive subscriptions need not be complied with. The draft for a revised stock corporation law suggests the abolition of incorporation by successive subscriptions.

1.b.(ii) Organization

1.b.(ii)1. Share capital and shares

Share capital

The share capital must be *fully subscribed before the incorporation* of the company. The capital may be increased subsequently by decisions of a General Meeting. Such increases require an amendment to the Articles of Association. The capital may also be decreased by decision of the General Meeting of shareholders, subject to detailed rules which ensure that such decreases may not be made to the detriment of creditors. While the present Swiss law does not recognize the concept of authorized capital, it is suggested that this institution be introduced in the forthcoming amendment of the law on stock corporations.

Shares

The shares must have a *par-value of at least 100 Swiss francs* (draft for amendments: 10 Swiss francs).

With regard to the transfer of shares, one can distinguish between *bearer shares* ('Inhaberaktien'/'actions au porteur' which are freely transferable by simple delivery; the holder of the share certificate is recognized as the owner of the share) and *registered shares* ('Namenaktien'/'actions nominatives' which are transferable by endorsement and delivery of the title. The company must keep a shareholders' register in which all registered shares and their owners are recorded, and it will accept as registered shareholders only the persons registered as such).

The Articles of Association may provide that the *transfer* of registered shares is *subject to approval by the Board of Directors* or by the General Meeting of shareholders. Such approval can be refused for specific reasons (such as the buyer's nationality) or without disclosure of the reasons thereof. According to the practice of the Swiss Federal Court, the buyer of a registered share who is not registered has no voting right but remains entitled to dividends and liquidation proceeds.

Besides *ordinary shares* ('Stammaktien'/'actions ordinaires'), there may be *preference shares* ('Vorzugsaktien'/'actions privilégiées') which have priority in the distribution of dividends or liquidation proceeds and *voting shares* ('Stimmrechtsaktien'/'actions à droit de vote privilégié') which have increased voting power.

If the share capital is increased, shareholders are entitled to subscribe for new shares proportionally to their previous holding. This *pre-emptive right* can be excluded for overriding purposes. Share ownership by employees, for example, is acknowledged as such an overriding purpose.

Apart from shares, a Swiss corporation can provide for ownership participation in the form of *non-voting profit sharing certificates*. Although such certificates originally were intended to facilitate financial reorganizations (creditors would waive their claims on exchange for such certificates), they have become a widely used financial instrument intended to attract non-voting capital.

The legal provisions for the issue of such certificates are extremely flexible: There is no minimum par-value nor any other specific restriction. The draft for an amended stock corporation law, however, contains detailed rules which make these certificates the equivalent of non-voting stock, being in the same financial position as shares.

1.b.(ii)2. Organs of the joint stock corporation

There are three necessary organs of the company:
- the General Meeting of Shareholders,
- the Board of Directors,
- the Auditors.

1.b.(ii)3. The general meeting of shareholders

The General Meeting is called the '*Supreme Organ*' of the company. It is supreme, however, only to the extent that the most important powers are assigned to it and that it elects the two other organs. The General Meeting is not entitled to interfere with the specific tasks of the other two organs.

An *ordinary General Meeting* must be held every year and *Extraordinary Meetings* can be held whenever appropriate. There are no legal distinctions between ordinary and extraordinary Meetings.

The Meetings must be *called* by the Board of Directors at least *10 days in advance*, either by individual notice or by publication.

Basically, resolutions are passed and elections are held by an *absolute majority of the shares represented* at the meeting; there is no requirement of a minimum representation. Exceptions (qualified representation and qualified quora) do exist for important decisions, such as the amendment of the purpose clause, extension of the

company's scope of business within its purpose, mergers, change of name, transfer of the company's legal domicile, etc.

Each shareholder can be *represented* at a General Meeting by a person of his choice. In the case of bearer shares, the bearer will qualify as the shareholder. In the case of registered shares, a written power of attorney is necessary.

Unlike German law, *banks are not restricted from representing shareholders* (Depotstimmrecht). In publicly held companies, the General Meetings are usually controlled by the votes represented by banks. The banks vote according to a Gentleman's Agreement and normally in favour of the proposals of the Board. In the draft for an amended stock corporation law, restrictions on the representation of shareholders by banks, similar to the German restrictions, are suggested. These restrictions are controversial and it is not yet sure whether they will finally be accepted.

1.b.(ii)4. The board of directors

The Board of Directors is composed of *one or more members, all of whom must be shareholders*. It is generally accepted in Swiss legal doctrine, however, that Board members are only formal and not beneficial owners of their shares and that they *act in a fiduciary capacity*. In fact in most foreign controlled Swiss companies lawyers, bankers and other businessmen act as Board members bound by a fiduciary relation to the foreign shareholder.

If the Board consists of a single member, it must be a *Swiss citizen resident in Switzerland*. If it is composed of more than one member, the majority must be Swiss citizens resident in Switzerland. (The Swiss Federal Council may grant exceptions to this rule for holding companies if the majority of the enterprises held are located in foreign countries.)

The Board has the duty and power to *conduct the business of the company*. It is authorized to decide all matters which are not delegated or reserved to the General Meeting or other corporate bodies.

Meetings of the Board are convened as often as may be considered necessary by its chairman. Every member can require that such a Meeting shall be called. If the corporation has different classes of shares, then each class has a right to at least one representative on the Board. This rule applies when legally different classes exist and not when minority groups merely have different interests. Swiss law provides for only one Board whose Directors are jointly responsible for the management and representation of the company. However, the Articles of Association or other company regulations may au-

thorize the General Meeting of shareholders or the Board of Directors to *delegate the management*, or any part thereof, and the representation of the company to one or more persons who are members of the Board of Directors (managing Directors) or to third persons who need not be shareholders (managers). This allows to create an organization similar either to the German system of 'Aufsichtsrat' and 'Vorstand' or to the American Board system.

1.b.(ii)5. Auditors

The General Meeting has to elect one or more Auditors who do not have to be shareholders.

Under the present law, the Auditors need not have any professional qualifications. A report by independent professional Auditors is required, however, for economically important corporations, and in practice virtually all of the large Swiss corporations are audited by bookkeeping experts. The draft for an amended stock corporation law requires that the Auditors of a corporation must have qualifications which are adequate with regard to the size and structure of the audited corporation. Furthermore, it requires that the Auditors are wholly independent of the company, the Board and any majority shareholder.

The Auditors must conduct an examination to determine that the statement of profit and loss and the balance sheet agree with the books and that the business results and financial position as represented in the financial statements comply with the legal requirements. The courts are insisting more and more that the examination be not merely a formal one: According to the present court interpretations, the Auditors must also examine whether the statements are correct in substance or not. In particular, they are required to determine that the principal assets of the company exist and their stated value does not exceed their actual value as of the date of the balance sheet.

The draft for an amended stock corporation law provides for a special audit (Sonderprüfung), upon the request of minority shareholders, in cases of possible mismanagement.

1.b.(ii)6. Accounting and publication of accounts

The *annual accounts* must be prepared according to generally recognized commercial principles. They must be expressed in Swiss francs.

Few specific provisions regulate the preparation of an AG's balance sheet and profit and loss statement. For example, contrary to German law, the present Swiss law does not prescribe a scheme of how the annual statement should be broken down. The suggested amendments, however, contain provisions requiring an annual statement to conform with certain minimum standards which will make this document more informative.

The informational value of the annual accounts of most of Swiss companies is impaired to a large degree by the possibility of creating and dissolving undisclosed reserves. The creation of undisclosed reserves by the management is allowed to the extent appropriate to ensure the continued prosperity of the company or to distribute dividends as equally as possible throughout the years.

- The draft for an amended law narrows the discretion of the management, the idea being basically that the creation of undisclosed reserves will continue to be permitted but that their dissolution will have to be disclosed.

The Board of Directors must submit to the General Meeting a *written annual report* on the company's financial position and the results of its activities. Since no specific rules exist to regulate the contents of such reports, they often do not provide any further information.

Except for banks, there is, in the existing law, *no obligation whatsoever to inform the public*. Upon the request of a proven creditor, a company must disclose, however, its profit and loss statement and its balance sheet as approved by the company's shareholders.

- The draft for a revised law provides for publication of the annual statement of large joint stock corporations.

While the present Swiss law does not contain any requirements for consolidated balance sheets except in the case of banks, the draft for an amendment requires consolidation for groups of companies.

1.b.(ii)7. Rights and duties of shareholders

A shareholder's *sole duty* to the company is to *pay for his shares* in full. A Swiss shareholder has typical shareholder *rights*, such as:

- the right to vote,
- the right to attend General Meetings and to discuss any topics on the Agenda,
- a (limited) right to information,
- the right to contest in court resolutions of the General Meeting

(but not of the Board), if such resolutions are against the law or the Articles of Association,
- the right to hold Board Members, Management, Auditors, Founders and Liquidators liable for a breach of their fiduciary duties,
- the right to receive dividends,
- the pre-emptive right to purchase newly issued shares, and
- the right to a proportionate share of the proceeds upon liquidation.

Minority interests have little protection under Swiss law because the Supreme Court tends to give preference to the interest of the company which, according to the Court, is usually expressed in the decision of the majority.

It should be stressed that the *information available* to a minority shareholder is limited in Switzerland. He is not entitled to inspect the books or correspondence of the company and he can obtain specific information only to the extent that business secrets will not be divulged.

The draft for an amended stock corporation law is designed to strengthen the position of the minority, in particular by providing the small and minority shareholder with more and better information and by facilitating access to the courts.

1.b.(ii)8. Groups of companies

No specific provisions for groups of companies exist in Swiss law; a company which belongs to a group is treated like an independent company.

1.b.(iii) Checklist for the establishment of a subsidiary

In order to achieve the incorporation of a Swiss subsidiary, the following checklist should be followed:
- canton and city of incorporation,
- name of the company,
- purpose clause of the Articles of Association (can be drafted in a rather broad way),
- amount of the subscribed and of the initial paid-up capital,
- nature of shares (registered or bearer shares), their number and nominal value,
- names, addresses and nationalities of Incorporators and original Shareholders with number of shares held,

- number, name, address and nationality of the members of the Board as well as of the Managers,
- number, name and address of the Auditors,
- duration of terms of office for members of the Board and Auditors,
- duration of the business year,
- authorized signatures for the company,
- will there be an active office in Switzerland and, if so, what activities will it engage in,
- residence and address of the company.

1.c OTHER FORMS OF BUSINESS ORGANIZATIONS

1.c.(i) 'Numerus Clausus' of forms of organizations legally provided for

Swiss law provides a limited number of forms of organization for commercial as well as for noncommercial purposes:

- Einfache Gesellschaft / Société simple
- Kollektivgesellschaft / Société en nom collectif
- Kommanditgesellschaft / Société en commandite
- Aktiengesellschaft / Société anonyme
- Kommanditaktiengesellschaft / Société en commandite par actions
- Gesellschaft mit beschränkter Haftung / Société à responsabilité limitée
- Genossenschaft / Société coopérative
- Verein / Association.

1.c.(ii) Survey on the various forms

1.c.(ii)1. Partnership ('Einfache Gesellschaft'/'Société simple')

This is an extremely flexible form used for all kinds of commercial and noncommercial purposes of a rather simple or transitory character. It can be established and dissolved without any formalities and is not registered in the Commercial Register.

The Partnership (it creates less intensive relations between the partners than the British partnership) is not a legal entity. Every partner is personally liable for the obligations of the Partnership.

1.c.(ii)2. General commercial partnership ('Kollektivgesellschaft'/'Société en nom collectif')

The General Commercial Partnership is an organization suitable to carry on a commercial enterprise by two or more partners who must all be individuals.

The General Commercial Partnership (it corresponds more or less to the British partnership) can be established and dissolved without formalities but must be registered in the Commercial Register.

The General Commercial Partnership is not considered to be a legal entity, but treated as such to a certain degree in its relations to third parties: It has its own business name, can enter into contracts, can sue and be sued and owns assets in its own name. If such assets are not sufficient to cover its liabilities, each partner is personally liable.

1.c.(ii)3. Limited partnership ('Kommanditgesellschaft'/'Société en commandite')

This is a modified form of the General Commercial Partnership in which one or more partners have limited liability (up to a specified amount recorded in the Commercial Register). These limited liability partners can be other than individuals such as legal entities. They have no duty or right to manage the Partnership.

1.c.(ii)4. Joint stock corporation ('Aktiengesellschaft', 'AG'/'Société anonyme', 'SA')

This form has been dealt with in some detail in section 1.2. heretofore. It is by far the most important form of doing business in Switzerland.

1.c.(ii)5. Partnership limited by shares ('Kommenditaktiengesellschaft'/'Société en commandite par actions')

This is a combination between the joint stock corporation and the General Commercial Partnership which is of no practical importance in Switzerland.

1.c.(ii)6. Limited liability company ('Gesellschaft mit beschränkter Haftung', 'GmbH'/'Société a responsabilité limitée', 'SARL')

This form has been created as the 'corporation of the small man'. It was copied from German law and introduced into Swiss law in 1936.

Its functions correspond (or should correspond) to the role of the private company or the close corporation.

Unlike the situation in the Federal Republic of Germany, the GmbH has extremely limited commercial importance in Switzerland where it is typical to establish a Joint Stock Corporation for small and one-man companies.

1.c.(ii)7. Cooperative association ('Genossenschaft'/'Société cooperative')

This corporation is designed to achieve commercial benefits by the co-operation of its members.

Cooperative associations, in particular agricultural and consumer cooperatives, play an important role in Swiss economy. However, they are not a suitable instrument for a foreign investor.

1.c.(ii)8. Association ('Verein'/'Association')

The association is a legal entity designed for noncommercial purposes and legally limited to such purposes. Nevertheless, it plays an important role as a form of organization for professional organizations, workers' unions and cartels. This use has been tolerated by the Federal Supreme Court although it is hardly in compliance with the wording of the legal provisions.

1.c.(ii)9. Investment fund ('Anlagefonds'/'Fonds d'Investissement')

It should be noted that a special law for investment funds exists which has the protection of investors as its exclusive goal. The law applies only to investment funds that are organized on a contractual basis, but not to investment clubs and similar groups. The courts, however, tend to broaden the field of application of this law.

2. THE JOINT VENTURE

2.a THE JOINTLY-OWNED COMPANY

2.a.(i) Shareholder agreements

According to Swiss legal doctrine and court practice, shareholder agreements and in particular voting arrangements are *legal*. They do not bind the company, however, but only bind the shareholders that are parties to the agreement. Thus, votes cast in violation of a shareholder agreement must be recognized as valid by the company. If the other parties to the agreement know of a planned violation, they can try to obtain a court order. Otherwise, their only remedy is to claim damages.

In practice various possibilities exist to ensure compliance with shareholders agreements such as penalty clauses and the deposit of the shares with a third person.

2.a.(ii) Minority rights

2.a.(ii)1. The Joint Stock Corporation is governed by *majority rules*: unless otherwise provided for by law or Articles of Association, the absolute majority of votes represented at a General Meeting of shareholders is sufficient to pass resolutions and determine elections.

The Supreme Court has upheld majority decisions even in cases in which the majority has disregarded legitimate interests of a minority.

The power of the majority is limited by certain vested rights (see section 2.a.(ii)2.) and by certain rights of minorities (see action 2.a.(iii)3).

2.a.(ii)2. The law specifies the following *vested rights* ('wohlerworbene Rechte'/'droits acquis') (those of which shareholders cannot be deprived without their consent): the right to take part in General Meetings of shareholders, voting rights, the right to contest an illegal decision of the General Meeting in court, right to dividends and to share in the liquidation proceeds. The Articles of Association can contain further vested rights.

2.a.(ii)3. *Minority rights* are contained in the provisions which require certain quora or a minimal representation of shares for decisions of the General Meeting of shareholders which are of specific importance (see section 1.b.(ii)3. heretofore. The draft for an

amended law abolishes all legal minimal representation requirements but strengthens certain requirements for quora.).

Further minority rights are:

- the right of one or more shareholders representing at least one-tenth of the capital stock to require the calling of a General Meeting of stockholders,
- the right of shareholders representing at least one-fifth of the capital stock to request the dissolution of the company for valid reasons by a court ruling,
- a group of shareholders can also be entitled to a representative on the Board of Directors, see section 1.b.(ii)4. heretofore.

As has been mentioned already, the draft for an amended stock corporation law tends to strengthen the position of the small and minority shareholder.

2.b CONSORTIA

According to Swiss law, the partnership is *the* legal form for consortia. See section 1.c.(ii)1. heretofore.

2.c OTHER FORMS

No legal provisions exist with regard to management contracts. Such contracts are not very common in Switzerland and to what degree they are valid has not fully been clarified by court decisions.

B. External Controls

1. EXCHANGE CONTROLS AND RELATED RULES

1.a. Switzerland has traditionally been a *net exporter of capital* and it functions, at the same time, as a widely recognized international financial centre. In view of the generally low interest rates Switzerland has been confronted from time to time with the problem of shielding the country's limited financial resources against large borrowings by non-residents and upwards pressures on domestic interest rates. Therefore, Switzerland follows a firmly entrenched policy to control the more important channels for capital exports.

The *Federal Law on Banks and Savings Banks* of 1934/71 ('Federal Banking Law') sets forth rules with respect to certain capital export transactions applicable, in principle, to banks and banklike finance companies. Subject to authorization are particularly place-

ments of bond and note issues by nonresident borrowers of 10 million francs and more as well as the granting of bank loans with maturities of twelve months and more and with principal amounts of 10 million francs and more to non-residents. The power of authorization is vested in the Swiss National Bank (Central Bank), which does not examine the safety of such investments but is authorized to object to such transactions or their conditions in the interest of the national currency, the development of interest rates in the Swiss money and capital markets or the economic welfare of Switzerland. General permits are granted for certain loans, participations in loans, note transactions and credits in foreign currencies provided that the leading bank is not resident in Switzerland. Such transactions must nevertheless be reported.

The Swiss Federal Council recently amended the Regulations to the Federal Banking Law in order to widen its field of application to banklike finance companies. Hitherto, only public solicitation of customer deposits (commercial banking activities) required a banking license. Under the amended Regulations coming into force on 1 January 1990, financial institutions publicly offering securities in the primary market and/or financing third party borrowers by substantially refinancing themselves with banks, will qualify as banks and be subject to all provisions of the Federal Banking Law (including the reciprocity requirements). The transitional provisions provide that institutions newly subject to the Federal Banking Law must report this to the Swiss Federal Banking Commission within six months and fully comply with the Federal Banking Law and be in possession of a banking license within three years, or cease banking activities.

1.b For *banks* and *banklike finance companies* some regulations are applicable with respect to financial data reporting requirements.

An Agreement on the Observance of Care in Accepting Funds and on the Practice of Banking Secrecy concluded in 1977 between the Swiss National Bank, the Swiss Bankers Association and resident banks was terminated by the Swiss National Bank. Subsequently, a new and somewhat more restrictive Agreement on the Swiss Bank's Code of Conduct with regard to the Exercise of Due Diligence (CDB) between the Swiss Bankers Association and resident banks has become effective on 1 October 1987.

The Swiss Penal Code was amended on 1 July 1988 by a new provision (art. 161) making *insider trading* a criminal offense. Roughly speaking, this new law criminalizes profits in trading securities based on confidential information. However, only securities listed on a Swiss stock exchange or traded on a pre-bourse market (a

non-listed securities market on the premises and under the rules of a Swiss stock exchange) are punished under the new law. The insider trading provision does, however, not apply to transactions in securities traded only on the over-the-counter-market. The offense is prosecuted *ex officio*. The sanctions are fines up to 40'000 francs and imprisonment up to three years. Under this new law it is now possible to lift Swiss banking secrecy when investigating insider trading. Bank information is not only available to Swiss authorities but also to foreign authorities pursuant to the judicial assistance treaties and conventions entered into by Switzerland. In particular, bank information may now be granted to the US Securities and Exchange Commission (SEC). In this context it should be noted that Switzerland does not have a supervising authority equivalent to the SEC. Insider trading offenses will therefore be prosecuted by the local district or state attorney. Furthermore, there are no federal (but only local) rules regulating the stock exchanges and securities trading.

2. TAKE-OVER CONTROLS

A Take-Over Codex has entered into force on 1 September 1989. The Codex is somewhat similar to the London 'City Code on Take-Overs and Mergers', but is a purely *private agreement* between the so-called 'Ring Representatives' (Swiss banks represented at the circular counters of the Swiss stock exchanges). The Codex applies to all public offerings for securities listed on a Swiss stock exchange or traded on a pre-bourse market. According to the Codex, the bidder must give such information as: His identity, number of the securities sought, price offered, shares held (by bidder), financing (by bidder). The bidder must treat all shareholders equally and, if it seeks more than 50% of the voting capital of the target, buy out all accepting shareholders. However there is no 5% disclosure rule, no best price rule, no prohibition to purchase privately outside the tender offer, no right to obtain a list of shareholders from the target, and no duty of the target to inform its shareholders of its position on the offer. The bidder must furnish a copy of its offer to a special Commission ('Regulierungskommission') which is supposed to supervise and assure that the Codex is complied with. However, the Commission has no means whatsoever to enforce the provisions of the Codex. Rather it is assumed that the Ring Representatives will only handle offers which are in line with the Codex.

The new Swiss Cartel Law entitles the Cartel Commission, under

certain conditions, to make inquiries regarding mergers. The Commission, however, has no right to request that a merger be reversed.

3. ANTI-TRUST PROVISIONS

The Swiss Cartel Law was recently amended and came into force on 1 July 1986.

While the new law is somewhat tougher than the previous one, it still does not prohibit cartels as such but only certain abuses of cartelisation. It imposes far less restrictions than the anti-trust laws of the Federal Republic of Germany, the United Kingdom or the EC.

4. ENVIRONMENTAL CONTROLS AND STATE MONOPOLIES

No particularities can be mentioned with regard to these topics.

III. TAXATION

A. Corporation Tax

1. LEGAL ENTITIES SUBJECT TO TAX

1.a RESIDENT LEGAL ENTITIES

Resident companies and other corporate bodies such as joint stock corporations ('Aktiengesellschaften' or 'AG'/'sociétés anonymes' or 'SA'), limited liability companies ('Gesellschaften mit beschränkter Haftung' or 'GmbH'/'sociétés à responsabilité limitée' or 'Sârl') and limited partnerships with shares ('Kommandit-Aktiengesellschaften'/'sociétés en commandite par actions') and cooperative associations ('Genossenschaften'/'sociétés coopératives') are subject to the Federal, cantonal and municipal direct taxes on income and capital.

For purposes of the Federal direct tax, a company is considered *resident* if it has its 'seat' ('Sitz'/'siège'), in other words its place of registration in Switzerland (the place of registration must be set down in the Articles of Association and entered in the Commercial Register).

The cantonal tax laws provide for unlimited tax liability of a company ordinarily at the place of its registration (seat) or at the place where its effective management is located.

Under the *intercantonal conflict of taxation rules*, a company is usually deemed to be resident in the canton where its activities are effectively and regularly carried on (place of effective management) notwithstanding its formal seat.

1.b NON-RESIDENT LEGAL ENTITIES

1.b.(ii) General rules

Generally, non-resident legal entities are subject to a *limited* Federal, cantonal and municipal *tax liability* with respect to income and capital attributable to a permanent establishment located in Switzerland (see section 1.b.(ii)); income and capital related to immovable

property situated in Switzerland; interest from debts secured by Swiss-situs immovable property and some other less significant types of income.

For Federal tax purposes, a non-resident legal entity is treated in the same manner as the resident legal entity to which it is most similar in legal terms and factual structure.

Non-resident legal entities with neither economic ties to Switzerland nor income from Swiss sources as outlined above are not subject to Swiss taxes with the exception of dividends and certain interest payments arising in Switzerland liable to the Federal Anticipatory Tax (see section B).

1.b.(iii) Branches

Under the Federal tax rules a permanent establishment is a fixed place of business through which a qualitatively or quantitatively essential part of the business of the enterprise is carried on. The branch ('Zweigniederlassung'/'succursale') is a typical form of permanent establishment through which a non-resident exercises a business activity in Switzerland. It is ordinarily subject to Federal, cantonal and municipal taxes on income and capital *attributable* to the branch located in Switzerland.

On the Federal level, non-resident individuals and partnerships maintaining a branch in Switzerland are taxed under the rules governing the taxation of individuals. Non-resident legal entities with a branch in Switzerland are, as mentioned above, taxed in the same manner as the corresponding resident legal entity. The tax of the branch is, in principle, levied on that share of total income (capital) of the whole enterprise which corresponds to the ratio between the factors of the branch and the factors of the whole enterprise. This '*fractional allocation method*' is identical to the method used to determine the income of a permanent establishment of a Swiss enterprise located abroad. Under this concept, a permanent establishment in Switzerland is basically treated as a part of the whole international enterprise. If the net income of the permanent establishment exceeds the income of the head office abroad, the amount taxable in Switzerland may not exceed the total income. Conversely, if the permanent establishment suffers a loss, a part of the total income of the enterprise may be attributed to the permanent establishment. In view of the problems related to the application of this method in the international context where the tax authority of one country is often unable to obtain complete and reliable data on the total income of an international enterprise, the

Federal Tax Administration ('FTA') recommends the assessment authorities to apply, if necessary, the *objective method* under which the assessment is carried out on the basis of the results of the branch alone. The FTA has issued Guidelines for such assessments in its Circular Letter of 1 June 1960.

The cantonal statutory rules on the determination of the income (capital) from a Swiss permanent establishment of a non-resident are few; and the existing rules vary from canton to canton.

2. COMPUTATION OF PROFITS

2.a INCOME AND CAPITAL

Resident entities subject to the unlimited tax liability are, in principle, taxable on their *worldwide* income and net wealth. Income arising outside of Switzerland is taxed whether remitted to Switzerland or not. Within this all-inclusive income and net wealth concept only income and capital related to *immovable property* and *permanent establishments* located outside of Switzerland are exempted from taxation in Switzerland (for the tax treatment of holding companies, domiciliary companies etc. see section K).

For Federal tax purposes income derived from immovable property and from permanent establishments located outside of Switzerland is exempted by reducing the total tax due in the same proportion that the income from immovable property or the permanent establishment bears to the taxpayer's total income (exemption with progression). In practice the exemption is also granted by the cantonal tax jurisdictions; however, not all of the cantonal tax laws explicitly provide for this exemptions. Some cantons grant the exemption only upon proving that a tax has been paid in the country where the income was earned.

With the exception of the non-taxables outlined above, basically all of an entity's net income is treated as taxable business income. These principles also apply to the capital tax. After making appropriate adjustments, net income (capital) as shown in the financial statements constitutes taxable income (capital).

Consequently, *dividends* and *interest* received by resident entities must be included in the gross income like all other forms of investment income. In some cases, however, special relief is granted to holding companies and other types of entities (see section K). A refund may be claimed with respect to the Anticipatory Tax withheld on Swiss source dividends and interest (see section B). Foreign

source dividends and interest are generally includible in income net for foreign taxes. A credit is not available unless specifically provided for by a tax treaty (see section 4.b.).

2.b CAPITAL GAINS (LOSSES)

On the Federal level, the income tax applies to capital gains arising from the sale of movable and immovable property in the same manner as to other income items.

Under the cantonal tax rules the taxation of capital gains varies widely. Capital gains derived from the alienation of immovable property are ordinarily taxed (i) by aggregating such gains with other income, (ii) by a special tax on immovable property gains, or (iii) by a capital gains tax. The rate often depends on the length of time the property has been owned.

The transfer of all or a majority of the shares of a *real estate company* is generally treated as the transfer of immovable property itself.

2.c EXEMPTIONS AND DEDUCTIONS

As a rule, the Federal and cantonal tax statutes permit deductions for ordinary and necessary business expenses. The deductibility of taxes paid and losses carried forward vary among the 27 taxing jurisdictions. On the Federal level a loss at the end of a two-year period (see section 5) can be *carried forward* to be set off against profits realised in the subsequent three two-year periods. In general, the cantonal treatment of losses is less generous (for instance, Zurich only permits a loss to be carried forward for four years).

The Swiss tax statutes do not allow a *loss carry-back*. In addition, losses of one entity may not be set off against profits of another entity.

Capital expenditures are deductible in the form of periodic depreciation charges. While *depreciation* for tax and book purposes need not conform, depreciation for tax purposes may not exceed that entered in the books. The straight-line and declining-balance methods are both accepted.

Normally, depreciation may not exceed the maximum rates fixed by the FTA, unless the taxpayer can justify application of a higher rate. The following examples for common assets apply to the *declining-balance* method and must be reduced by one-half when the straight-line method is used:

Commercial and bank buildings, department stores	4%
Hotels and restaurants	6%
Factories, industrial buildings and workshops	8%
Office and workshop furniture and equipment	25%
Manufacturing machinery and installations, vehicles of all types except motor vehicles	30%
Motor vehicles	40%
Intangibles (patents, trademarks and goodwill etc.)	40%
Office machines, computers	40%
Hand tools and small equipment	45%

Higher rates of depreciation may be allowed if assets are subject to excessive use.

Most cantons also accept the rates set forth by the FTA. In some cantons even higher rates are tolerated.

Deductions are also normally allowed for bad debt reserves, inventory valuation reserves and certain other purposes.

In addition, a general deduction of not more than 5% of outstanding domestic receivables and 10% of foreign receivables at the end of the year may be allowed.

Although appropriate deductions for accounting purposes, some items may be *non-deductible* for tax purposes, such as payments to undisclosed persons, excessive compensation paid to corporate officers, disguised distribution of corporate profits and – in some cantons (for instance in the Canton of Zurich) – income and capital taxes paid or incurred.

3. RATES OF TAX

As pointed out in the introduction, corporate income and capital are subject to Federal, cantonal and municipal taxes. In general, the aggregate of the cantonal and municipal income and capital taxes is higher than the Federal income and capital tax.[1]

1. In 1984 the Federal tax on income and capital accounted for 27.3%, the cantonal tax for 45% and the municipal tax for 27.7% of the combined Federal, cantonal and municipal tax receipts. (Source: Statistische Quellenwerke der Schweiz/Heft 789 'Oeffentliche Finanzen der Schweiz 1986' bearbeitet von der Eidgenössischen Finanzverwaltung).

3.a INCOME TAXES

3.a.(i) Federal tax

The Federal tax on the net income of corporations and related legal entities (and branches) is levied at progressive rates on a *yield-intensity* basis. The yield is the percentage that taxable net income bears to the company's proportional or reference capital composed of the nominal share capital and reserves plus retained earnings.

The corporate tax rates are composed of a

a. basic rate of 3.63% on all net income;

b. additional tax of 3.63% on the portion of net income in excess of 4% of the reference capital;

c. second additional tax of 4.84% of the portion on net income in excess of 8% of the reference capital.

(The computation of the additional taxes is slightly different if capital is less than 50,000 francs).

The maximum rate, however, is 9.8% of the net income. It is reached when the company's net income equals or exceeds roughly 23% of its reference capital.

3.a.(ii) Cantonal and municipal taxes

The widely varying computation of the *cantonal* corporate income taxes in the 26 cantonal tax jurisdictions can only be briefly summarized here. In most cantons the corporate income taxes are progressive within a fixed range. The tax is frequently computed based on the percentage that net income bears to taxable capital. Some cantons do not use a yield-intensity formula, but simply tax successive segments of income at graduated rates up to a maximum rate. Generally, multiples are then applied on the resulting rate. The multiples are subject to periodical adjustments.

The *municipal* tax is usually levied as a multiple of the cantonal tax rate, varying from municipality to municipality within a canton. As a rule of thumb, the maximum (combined cantonal and municipal) corporate income tax rate generally does not exceed 30%; in some cantons the maximum rate is considerably lower. Most municipalities also impose small additions to the rate for a *church tax*.

3.b CAPITAL TAXES

3.b.(i) Federal capital taxes

The Federal tax on capital and reserves of corporations and related legal entities (and branches) is levied at the flat rate of 0.0825% (regardless whether any income is earned).

3.b.(ii) Cantonal and municipal capital taxes

The basic capital tax rates are ordinarily increased by both a cantonal and municipal multiple comparable to the income tax multiple. In most cantons the combined cantonal and municipal capital tax rate is considerably less than 1%.

3.c CORPORATE TAX INCIDENCES IN SOME SELECTED CANTONS

As an illustration of Switzerland's heterogeneity in the area of taxation, the following table shows the combined annual taxes (Federal, cantonal and municipal) of a joint stock corporation (located in the Canton's capital) with adjusted net income of 16,000, 30,000 and 50,000 francs and taxable capital and reserves of 100,000 francs (based on 1988 figures):

Canton	*16,000*	*30,000*	*50,000*
Zurich	4,356	9,526	15,697
Bern	2,973	6,254	10,638
Zug	2,889	5,685	9,289
Basel-City	4,361	8,840	14,257
Grisons	2,913	5,945	10,768
Geneva	3,974	9,621	15,834

(Source: Steuerbelastung in der Schweiz, 1988)*

4. TAX CREDITS

In the Swiss tax system, there are basically only the two following types of tax credits available:

4.a CREDIT FOR ANTICIPATORY TAX WITHHELD AT SOURCE

The Anticipatory Tax withheld at source from the specified income items of a resident represents, as a general rule, a kind of advance payment on the income and net wealth taxes. The tax withheld may be credited against such taxes on condition that the claimant is the beneficial owner of the asset generating such income and that he reports such income. Amounts in excess are refunded (see also section B).

4.b LUMP-SUM TAX CREDIT UNDER A TAX TREATY

Basically, Swiss domestic tax laws do not provide for a foreign tax credit (except in a few cantons in cases of marginal importance). A tax credit is granted only if provided for explicitly by a tax treaty. The treaties concluded or revised since 1965 contain special provisions for the so-called '*Lump-Sum Tax Credit*' ('Pauschale Steueranrechnung'/'imputation forfaitaire d'impôt'). This credit covers, in principle, the non-refundable part of taxes withheld in the other contracting country on dividends, interest and royalties.

The 'Lump-Sum Tax Credit' is granted in a single amount for the Federal, cantonal and municipal taxes. Detailed rules focus particularly on the grossing-up of foreign source income, determination of the maximum creditable amount, method of computation, reduction of the tax credit by expenses, and treatment of holding and domiciliary companies (for details see Decree of the Federal Council of 22 August 1967 and related Regulations and (in summary form) Instructions DA-M issued by the FTA).

No lump-sum tax credit is obtainable under the treaties with Finland (1956/1970), Norway (1956), Pakistan (1959/1962) and the United States (1951).

5. TIMING OF ASSESSMENT AND PAYMENTS

The computation and assessment periods on which Federal and cantonal taxes are based vary in length. For computing, assessing and paying taxes there are different periods to be taken into account:

- The term '*computation (or base) period (year)*' means the period (year) on whose income the tax is based;
- The term '*assessment period (year)*' means the period (year) for which the tax is levied. The tax is generally, but not always, imposed on the basis of the computation period (year) which

immediately precedes the assessment period (year);
- The term '*payment period (year)*' means the year in which the tax is to be paid. It is either identical with the assessment period (years) or with the calendar year(s) immediately following the assessment period.

If the accounting year of a company is not the calendar year, the assessment is based on its accounting year(s).

5.a FEDERAL DIRECT TAX

The Federal tax is assessed for a period of *two successive calendar years* (assessment period) beginning with an odd numbered year and based on the average net income for the two preceding years (computation period). The Federal direct tax is due on 1 March following the end of each year of the assessment period. To illustrate the interaction of the three periods: The Federal direct tax for the year 1987 and the year 1988 is based on the average net income and capital of the years 1985 and 1986, and the resulting annual taxes are due on 1 March 1988, tax for 1987, and on 1 March 1989, tax for 1988.

5.b CANTONAL AND MUNICIPAL TAXES

The majority of cantons also use the bi-annual assessment. A group of cantons base the assessment of the income and capital taxes on a one-year period, but also on a preceding year basis. A few cantons now follow the concept of the current-year basis under which the computation year and assessment year are identical. Cantonal and municipal taxes are due at different dates varying from canton to canton.

6. REVIEW AND APPEAL

The heterogeneity of the Swiss tax laws is also reflected in the great variety of protest and appeal procedures. However, a certain harmony exists with respect to the basic principles.

6.a FEDERAL DIRECT TAX

A taxpayer dissatisfied with a final Federal tax assessment decision is entitled to file a '*protest*' ('Einsprache'/'réclamation') with the

Federal tax assessment authority of the country of residence. The assessment authority's decision may again be challenged by an '*appeal*' ('Beschwerde'/'recours') with a cantonal judiciary appeal commission. A taxpayer who is still dissatisfied with that decision may file an '*administrative-law appeal*' ('Verwaltungsgerichtsbeschwerde'/'recours de droit administratif') with the Federal Court. In specific cases a petition may be filed for the extraordinary remedy of a '*revision*' with the authority that last dealt with the challenged decision (notwithstanding the level of the deciding instance).

The protest procedure is a part of the assessment procedure and constitutes an administrative act. The protest must be filed within 30 days. The review of the contested assessment notice is governed by the principle of an ex officio investigation. Filing a protest does not automatically stay payment of tax; but the taxpayer may request a stay of payment.

6.b CANTONAL AND MUNICIPAL TAX

The structure of cantonal tax protest and appeal procedures is rather complex and varies from canton to canton with respect to the terms of protests and appeals available and the legal nature of the review bodies. Some cantons have set up 'appeal commissions'; some cantons use their civil courts to deal with cantonal tax matters; and in other cantons administrative courts are used as the higher appeal bodies.

A taxpayer alleging violation of his constitutional rights (such as equality before the law or the prohibition against intercantonal double taxation) is entitled to challenge a cantonal tax decision before the Federal Court by means of a '*public law appeal*' ('Staatsrechtliche Beschwerde'/'recours de droit public').

B. Withholding Taxes on Dividends, Interest, Royalties and Other Income

1. INCOME CATEGORIES SUBJECT TO WITHHOLDING TAX

1.a GENERAL

The *Federal Anticipatory Tax* ('Verrechnungssteuer'/'impôt anticipé') is the only withholding tax of general application in Switzerland. It is levied at the source and in anticipation of the income tax

liability to be borne by the recipient on income from movable capital, lottery winnings, and insurance payments. The withholding of tax, however, does not relieve the taxpayer from reporting the income. For non-residents, it may constitute a final tax charge.

1.b INCOME FROM MOVABLE CAPITAL

Income from the following sources is subject to the tax: interest, rent, profit distributions and similar types of income derived from
- *bonds and debentures*, serial mortgage certificates, serial land charge notes and registered notes issued by a resident person;
- *shares* in resident joint stock corporations, limited liability companies and cooperative associations and participation certificates (bons de jouissance);
- *units* of an *investment* fund or other conglomerations of property of a similar nature issued by a resident person or by a Swiss resident jointly with a non-resident;
- *deposits* in resident banks and savings banks.

Consequently, interest paid by a debtor other than a bank on a current account or an individual's note is, in principle, not subject to the Anticipatory Tax.

The Federal Tax Administration has also set forth minimum and maximum interest rates for loans to and by the shareholder. Any interest payment outside the permissible range is deemed to be a disguised dividend and taxed accordingly.

Lottery winnings and (at reduced rates) insurance payments to Swiss residents are also subject to the Anticipatory Tax.

The Anticipatory Tax may be reclaimed by beneficially entitled Swiss residents upon reporting the income items from which the tax was withheld. Persons subject to limited tax liability (including domestic branches of non-residents) may, in principle, claim a refund up to the amount of Swiss taxes actually paid.

1.c ROYALTIES

As already mentioned, no withholding tax on royalties derived from Swiss sources and paid to a non-resident is levied on the Federal level.

2. RATES

Regular rate:	35%
Rates on pensions and annuities:	15%
Rate on other insurance payments:	8%

3. EFFECT OF TAX TREATIES

In the case of non-residents, the Anticipatory Tax is, in principle, a final tax charge. Only the beneficially entitled recipient resident in a country with which Switzerland has concluded a tax treaty may claim a full or partial refund under the treaty rules or the regulations (see schedule of withholding taxes in section J).

C. Stamp Duties

The Confederation levies Stamp Duties ('Stempelabgaben'/'droits de timbre') on certain securities, bills of exchange and similar documents (Stamp Duty Act of 27 June 1973, and the Regulations of 3 December 1973). There are three types of duties: the *Issue Stamp Duty* ('Emissionsabgabe'/'droit de timbre d'émission') the *Transfer Stamp Duty* ('Umsatzabgabe'/'droit de timbre de négociation'), and the duty on certain *Insurance Premiums*. The Federal Stamp Duties also apply in the Principality of Liechtenstein. Some cantons impose stamp duties on legal documents, but these duties are insignificant.

1. ISSUE STAMP DUTY

The Issue Stamp Duty is an important consideration when establishing a company in Switzerland. It is levied at a rate of 3% on the creation of participation rights (shares) or the increase of their par value with or without consideration such as shares and profit-sharing certificates of a resident joint stock corporation and limited liability company and of other types of shares. The duty is also imposed on voluntary capital contributions made by shareholders to the company and on the transfer of a majority shareholding in a 'shell company'.

A *reduced rate* of 1% is levied on the issuance of participation rights or the increase of their par value in connection with a merger, transformation or splitting of a company, and on the transfer of a non-resident company to Switzerland.

A 0.9% duty is levied on the issuance of *investment fund units*.

Contributions in kind are measured by their actual market value.

Normally, voluntary capital contributions to a company are taxable only if made by a shareholder. In the event a shareholder waives his claims against the company to cover corporate losses, the Federal Tax Administration may waive the Issue Stamp Duty.

2. TRANSFER STAMP DUTY

The Transfer Stamp Duty applies to transfers of securities for consideration if one of the contracting parties or one of the intermediaries is a resident '*security dealer*' ('Effektenhändler'/'commerçant de titres').

Taxable securities include bonds, debentures, certificates of deposit, shares in a joint stock corporation and limited liability company, profit-sharing certificates, investment fund units, bills of exchange, promissory notes and other notes of any kind issued by a resident as well as certificates of participation in such securities. The sale of securities or their economic or functional counterparts issued by non-residents is also subject to the duty.

'*Security dealers*' as defined by the Stamp Duty Act are basically (1) individuals, legal entities and partnerships who are professionally engaged in the purchase and sale of securities; (2) companies managing investment funds and depository banks; and (3) joint stock corporations, limited liability companies and cooperative associations whose primary statutory purpose is investing in other companies and whose statutory share capital is at least 500,000 Swiss francs or which have more than one-half of their assets, according to their most recent balance sheets, invested in taxable securities within the terms of the Stamp Duty Act (shares etc.) and which have assets aggregating at least one million francs.

The rates are 0.15% on securities issued by *residents* and 0.3% on those issued by *nonresidents* (except for certain securities at three months' date for which the rates are 0.1 respectively 0.2%). For certain transactions, only one-half of the applicable duty is payable (for instance for the conclusion of a transaction outside of Switzerland with a non-resident bank or stock exchange agent). Primary liability for the payment of the duty rests on the resident 'security dealer'.

The Stamp Duty Act also provides for several transactions which are *exempt* from the duty, such as the issuance of shares which are subject to the Issue Stamp Duty and the purchase of bills of exchange, notes, participation interests in a loan, etc. by banks for their own account.

The Stamp Duty Act is supplemented by detailed Regulations issued by the Federal Tax Administration.

D. Taxes on Individuals

(This chapter provides only a very brief summary.)

1. PERSONS SUBJECT TO TAX

All individuals having a residence ('Wohnsitz'/'domicile') in Switzerland are subject to the *unlimited Federal taxation* on worldwide income and net wealth. The same tax status applies to individuals with a habitual abode in Switzerland if they are gainfully employed or if they stay there – without earning any income – for 6 months or more or own and occupy a house there for 3 months or more. The only *exemptions* from the Federal taxation are income and capital related to immovable property and permanent establishments situated outside of Switzerland and income and net wealth items exempted by virtue of a tax treaty.

Under the *cantonal* tax laws maintaining a habitual abode in connection with gainful employment normally subjects an individual to unlimited tax liability with respect to cantonal and municipal taxes. An individual who is not gainfully employed is subject to tax in most cantons after living there for 3 months.

In line with Swiss civil law, the tax laws are based on the principle of the '*family unit*' by aggregating the income of a married woman with that of her husband in whom all her fiscal rights and duties are vested (tax substitution).

2. COMPUTATION OF INCOME

2.a INCOME

In principle, *all* gross income, whether received in cash or in kind, is subject to tax (except the aforementioned exemptions and, in some tax jurisdictions, capital gains). It includes earned income, income from the operation of a business, rental income, dividends, interest, annuities, pensions (private and social security) and all other retirement income. Certain annuity and retirement income is reduced by 20% or 40%, depending on the recipient's contribution to the cost.

The amount of exempted income and capital (except capital gains)

is ordinarily taken into account when calculating the amount of tax on the remaining income and capital (exemption with progression).

Some cantons withhold taxes (Federal, cantonal and municipal) from *expatriates*' employment income. In other tax jurisdictions, however, the ordinary assessment procedure applies if income exceeds a certain amount, or its application may be requested subsequent to the withholding of the taxes.

Aliens residing in Switzerland who are not carrying on a lucrative activity may – on the Federal level and in some cantons – apply for the *lump-sum tax* ('Pauschalsteuer'/'impôt à forfait'). This is a special method of computing tax based on the taxpayer's living expenses, generally measured by the rental value of his living quarters and other visible types of expenditures incurred by the taxpayer and his dependants. Special rules cover Swiss source income and treaty favoured income. In addition some tax treaties contain 'anti-lump-sum tax' clauses.

2.b CAPITAL GAINS

The taxation of capital gains is one of the more complex aspects of the Swiss tax structure particularly because of the difficulty of defining the tax subject and the widely differing statutory patterns.

On the *Federal* level, capital gains realized by an individual in the normal course of managing his private fortune are, in principle, not treated as taxable income. However, capital gains realized on the alienation of movable and immovable property may be taxable if such gains result from the taxpayer's professional activity or a principal or accessory occupation, even if derived from causal and isolated transactions. The borderline between exempt and taxable capital gains can be a hairsbreadth.

The *cantonal* treatment of capital gains realised on private movable assets varies considerably. One group of cantons exempts them from taxation, other cantons include such gains in the ordinary income tax, and a third group taxes private capital gains separately from ordinary income.

Capital gains realized on private *immovable property* are taxed in all cantons (partly also by the municipalities). The majority of cantons imposes a special immovable property gains tax on such gains ('Grundstückgewinnsteuer'/'impôt sur les gains immobiliers'). The tax rates usually depend on the amount of gain, the location of the property, and the length of time the seller has held the property.

2.c EXEMPTIONS AND DEDUCTIONS

All income tax laws grant certain *deductions* depending on the civil status of the taxpayer. Thus, for Federal income tax purposes deductions are available for married couples, children and dependants.

Each canton has different rules for itemized deductions. Generally, *deductions* are allowed up to a certain maximum amount for transportation expenses to and from work, the excess expenses with regard to meals not taken at home and insurance and compulsory old age insurance premiums. Maintenance expenses for immovable property and loan interest are also deductible.

3. RATES OF TAX

The *Federal* income tax is levied at graduated rates rising to a maximum rate of 11.5% (reached at an income of over 555'300 francs as from 1.1.1989 for a married couple without children). In addition to the Federal tax, a *cantonal* (and municipal) income tax is imposed at graduated rates.

Church and *poll taxes* may also be levied. As in the case of corporations, the cantonal (and municipal) tax is generally a heavier burden on the individual than the Federal tax.

The *net-wealth* of an individual is not taxed on the Federal level, but all cantons (and municipalities) impose a capital tax at either a graduated or a flat rate.

The following table shows the *combined tax charge* (Federal, cantonal and municipal taxes) of a married employed couple without children with aggregate annual incomes of 50,000 and 100,000 francs and a net wealth of 500,000 francs residing in the capital of the following cantons:

Canton	*50,000*	*100,000*
Zurich	4,997	16,540
Bern	8,050	23,587
Zug	4,097	12,969
Basel-City	8,546	23,814
Grisons	5,898	19,764
Geneva	7,090	23,184

(Source: Steuerbelastung in der Schweiz, 1988).

4. SUCCESSION AND GIFT TAXES

No Federal succession or gift taxes are levied. Succession and gift taxes of various sorts are imposed, however, in all but one canton (Schwyz). Two cantons do not tax gifts (Lucerne and Solothurn). Most cantons levy an inheritance tax, others an estate tax or an estate and inheritance tax. Within a few cantons the municipalities also tax successions.

The rates, which vary from canton to canton, are progressive and graduated depending on the degree of relationship between deceased and heir (or legatee), the value of the inheritance or estate and, in some cantons, the net wealth of the beneficiary.

As a rule, the right to tax inheritances and estates belongs to the canton in which the *deceased* had his *last residence* at the time of his death; the residence of the beneficiary is not relevant. Immovable property is regularly taxable in the situs canton. With respect to gift taxes movable property is subject to tax in the canton where the *donor* is resident.

The tax rates may range from a few percentage points (next-of-kin) to as high as some 59% (no blood relationship).

Some cantons grant a full or partial exemption from tax to surviving spouses and descendants. Some apply reduced rates on resident aliens in specific cases.

Switzerland has concluded *succession tax treaties* with Austria, Denmark, Finland, France, Germany (Federal Republic), the Netherlands, Norway, Sweden, the United Kingdom and the United States. However, some of the treaties do not provide full relief from double taxation.

In the absence of a treaty provision so providing, the deduction of or a credit for foreign succession taxes is generally not available.

E. Indirect Taxation

The most significant indirect tax other than the Stamp Duties (see section C) is the *Federal Turnover Tax* ('Warenumsatzsteuer'/'impôt sur le chiffre d'affaires'). Introduced in 1941 as a temporary emergency measure to meet the budgetary deficit, it has developed into an important source of revenue for the Federal treasury, accounting for more than 25% of the total Federal fiscal revenue. The Turnover Tax is also levied in the Principality of Liechtenstein by the Swiss Federal Tax Administration; the Liechtenstein Government shares the revenues collected. The proposed *Value Added Tax* (which has been designed to offset the declining revenues from customs duties)

was rejected in two popular compulsory referenda in 1977 and 1979.

The Turnover Tax is a single-stage sales tax on domestic turnover and on imports of movable goods. The standard rates are 6.2% for *retail deliveries* and 9.3% for *wholesale deliveries*. Services are not taxable. Certain goods such as food and foodstuffs, agricultural and medical supplies, newspapers and most books are exempt.

On domestic transactions only '*wholesalers*' ('Grossisten'/'grossistes') are liable for the Turnover Tax. Wholesalers are basically

1. producers with annual sales (including self-consumption) in excess of 35,000 francs;
2. dealers (merchants) with annual sales (including self-consumption) in excess of 35,000 francs provided that at least one half of the sales represent wholesale deliveries; and
3. dealers in used products (secondhand goods, etc.) with annual sales in excess of 35,000 francs whether or not the sales are wholesale deliveries.

All of the wholesalers must register with the Federal Tax Administration.

Other firms which are predominantly retailers may request permission to be registered as a wholesaler on a voluntary basis.

Generally, the Turnover Tax is paid by the last registered wholesaler making a sale to a non-registered company or to an individual. A wholesale sale to another registered purchaser is not taxable if the purchaser provides the seller with its registration number, unless the purchase is made for its own use. Similarly, if goods are manufactured for internal use, the manufacturer-user is subject to the Turnover Tax.

The Turnover Tax is territorially connected with deliveries which are exclusively domestic. Thus, the moment of the actual delivery is decisive. The nationality or residence of the wholesaler and the location of its head office, place of management or permanent establishment are immaterial. For Turnover Tax purposes, the territory of Switzerland means the Swiss customs area, including the Principality of Liechtenstein, but excluding customs-free bonded warehouses and areas ('Zollausschlussgebiete'/'enclaves douanières'). Direct export deliveries are exempt. Exemption of a wholesaler's domestic delivery for export is, however, granted only upon satisfaction of specific requirements.

The taxpayer must file a quarterly return and pay the Turnover Tax within 30 days after the end of each quarter.

F. Incentives

Switzerland offers a relatively limited potential for investment in new manufacturing operations mainly because of its shortage of labour, high labour costs, restrictions on the acquisition of real estate by non-residents and a restrictive policy in granting work permits to aliens.

Only few genuine tax incentives are obtainable. To eliminate undue intercantonal competition for new industrial enterprises and for other attractive taxpayers, a *Concordat* between all Swiss cantons was concluded in 1948. The Concordat prohibits the conclusion of tax agreements between cantons (and their political subdivisions) and taxpayers. However, tax reliefs are permitted for new industrial enterprises (for less than ten years) and public service enterprises and the lump-sum taxation of individuals (see section D 2.a) to the extent which such reliefs are statutorily authorized. Special tax rules designed for some types of companies are not considered as incentives within the terms of the Concordat (see section K).

The tax laws of some cantons provide tax reliefs for new industries if their settlement in the canton is economically and regionally desirable.

Incentives are, as a rule, only available for settling new industries in 'less developed' and usually remote areas. The extent of tax incentives is negotiated on a case by case basis.

G. Social Security System

1. The Swiss social security system is based on 'three pillars': The 'Federal Old Age and Survivors Insurance' scheme constitutes the 'first pillar' and provides the basic insurance (see subsection 2). Under the Federal Law on Compulsory Employee Retirement Plans, companies are required to set up a pension fund to be registered in a special cantonal register, or to join a fund already registered (second pillar). The provision of retirement benefits under the 'third pillar' is left to each individual (such as life insurance). Social security contributions are, in principle, deductible business expenses for the employer, and also tax deductible for the employee within certain limitations.

2. The '*Federal* "Old Age" *and Survivors Insurance*' plan ('Alters- und Hinterbliebenenversicherung' or 'AHV'/'assurance-vieillesse et survivants' or 'AVS') is a compulsory national pension plan. In principle, all persons permanently resident or gainfully employed in

Switzerland and Swiss citizens employed abroad by a Swiss employer are subject to the insurance plan. Aliens gainfully employed in Switzerland are required to participate unless their employment lasts less than three months and their salaries are paid by a non-resident employer (or unless the person enjoys tax immunity under international law). Aliens participating in a compulsory pension plan of another country may be exempted if the contributions payable under both pension plans would constitute an unreasonable burden for the insured. The 'Old Age and Survivors Insurance' is financed primarily from compulsory contributions from insured persons and from employers at a present aggregate rate of 8.4% of the participant's salary. Self-employed persons contribute 7.8% of their earned income.

The benefits provided by this insurance plan include pensions for men at 65 years of age and women at 62, widows pensions regardless of age if with dependent children or if at least 40 years old, and orphans pensions.

Whereas the old age pensions are determined with reference to a maximum salary (at present 54'000 francs), the contributions are not linked to a salary ceiling but levied on the whole salary (contributions paid on amounts exceeding 54'000 francs, therefore, have the character of a disguised tax).

In addition, there is a compulsory '*Federal Disability Insurance Plan*' ('Invalidenversicherung' or 'IV'/'assurance-invalidité' or 'AI') financed by a contribution equal to 1.2% of the salary and a obligatory '*Compensation Plan in favour of Persons in Compulsory Military Service*' ('Erwerbsersatzordnung für Wehrpflichtige'/'régime des allocations aux militaires'), supported by a contribution equal to 0.5% of the salary. Alien employees are also subject to these plans. Under both plans, half of the contribution must be paid by the employer.

Thus, the aggregate premium for the first pillar of insurance amounts to 10.1% of which one half must be paid by the employer The total premium for self-employed persons is 9.5%.

3. Persons who are gainfully employed are also covered by a *compulsory unemployment insurance*. One half of the contribution of 0.4% (payable on a monthly salary of up to 6,800 francs) is again borne by the employer.

H. Other Taxes and Duties

Historically, *indirect* taxes were levied by the Confederation and *direct* taxes by the cantons and the municipalities. With the adoption

of the Federal income and capital taxes this rule ceased. But indirect taxes imposed by the political subdivisions have remained relatively insignificant.

The Confederation, cantons and municipalities do levy a variety of other taxes and duties such as taxes on certain alcoholic beverages, registration taxes, motor vehicle taxes, entertainment taxes, taxes on visitors, poll taxes and Military Service Exemption Tax. These levies are ordinarily of little importance for normal business operations.

The following two levies, however, may have a certain relevance for the business community:

1. IMMOVABLE PROPERTY TRANSFER TAXES

The cantons and some municipalities levy a tax or fee on the transfer of immovable property at rates usually not exceeding 3% of the purchase price of the fair market value of the property.

Subject to the tax or fee are also inter vivos transfers of the title to immovable property and transactions that are economically equivalent to such transfers whether or not any gain is obtained as a result of the transaction (therefore to be distinguished from the immovable property gains taxes as outlined in section A.2.b.). The transfer of shares in real estate companies does, in some cantons, also give rise to a liability for this tax.

2. CUSTOMS DUTIES

The power to levy import and export duties ('Zölle'/'droits de douane') is exclusively vested in the Confederation. Most of the customs duties are import duties. Export duties are levied only on calf rennet bags, ash and residues containing metals or metallic compounds and certain machining waste and scrap. The import duties are, as a rule, assessed on the basis of gross weight (including packing). A statistical fee is levied at the time of import clearance. The Constitution requires that the rates on imports of raw materials for industry and agriculture and the commodities necessary to life be as low as possible whereas articles of luxury be subject to the heaviest duties. The rates are set forth in detail in the 1959 Tariff Law which systematically specifies the items based on the Customs Cooperation Councils Nomenclature (CCCN).

With the participation of Switzerland in the *General Agreement on Tariffs and Trade (GATT)* and the *European Free Trade Association (EFTA)* and particularly with the conclusion of the Free Trade

Convention with the *European Economic Community (EEC)* on 22 July 1972, the revenues derived from customs duties have substantially decreased.

The Principality of Liechtenstein is a part of the customs territory of Switzerland by virtue of a treaty concluded in 1923. The Swiss customs territory does, on the other hand, not include bonded warehouses ('Zollfreilager'/'dépôts francs').

I. Double Taxation Treaties

1. LIST OF TAX TREATIES

Australia	income	28. 2.80
Austria	income and capital	30. 1.74
	estates and inheritances	30. 1.74
Belgium	income and capital	28. 8.78
Canada	income and capital	20. 8.76
Denmark	income and capital	23.11.73
	estates and inheritances	23.11.73
Egypt	income	20. 5.87
Finland	income and capital	27.12.56/27. 5.70
	estates and inheritances	27.12.56
France	income and capital	9. 9.66/ 3.12.69
	estates and inheritances	23.12.53
Germany (Federal	income and capital	11. 8.71/30.11.78
Republic)	estates and inheritances	30.11.78
Greece	income	16. 6.83
Hungary	income and capital	9. 4.81
Indonesia	income	29. 8.88
Ireland	income and capital	8.11.66/24.10.80
Island	income and capital	3. 6.88
Italy	income and capital	9. 3.76/28. 4.78
	frontier workers	3.10.74
Ivory Coast	income	23.11.87
Japan	income	19. 1.71
Korea (Republic)	income	12. 2.80
Malaysia	income	30.12.74
Netherlands	income and capital	12.11.51/22. 6.66
	estates and inheritances	12.11.51
New Zealand	income	6. 6.80
Norway	income and capital	7.12.56/ 7. 9.87
	estates and inheritances	7.12.56
Pakistan	income	30.12.59/15. 6.62

Portugal	income and capital	26. 9.74
Sweden	income and capital	7. 5.65/ 7. 2.79
	estates and inheritances	7. 2.79
Singapore	income and capital	25.11.75
South Africa	income	3. 7.67
Spain	income and capital	26. 4.66
Sri Lanka	income and capital	11. 1.83
Trinidad and Tobago	income	1. 2.73
United Kingdom	income	8.12.77/ 5. 3.81
	estates and inheritances	12. 6.56
	income	30. 9.54 (only for certain territories)
United States of America	income	24. 5.51
	estates and inheritances	9. 7.51
USSR	income	5. 9.86

2. SWISS DOMESTIC AND TREATY MEASURES AGAINST ABUSE OF TREATY BENEFITS[1]

2.a. In 1962, the Swiss Federal Council issued a *'Decree concerning Measures against the Improper Use of Tax Treaties concluded by the Confederation'* ('1962 Decree'). The rules set forth in the 1962 Decree are designed to curtail abuses that surface in connection with claiming treaty benefits in combination with preferential tax rules under domestic law.

The 1962 Decree enunciates the general rule that treaty advantages (relief from foreign taxes withheld at source) may not benefit persons who are *not entitled* thereto such as recipients that are not bona fide residents in Switzerland, and residing recipients that do not have a beneficial interest in the income, or recipients that are not liable for Swiss taxes.

In addition, the 1962 Decree bars *'abusive'* claims for tax treaty relief. A claim by a resident individual, entity or partnership is abusive if a substantial part of the treaty relief would directly or indirectly benefit persons not entitled to the treaty relief. Under this rule, the 1962 Decree prohibits any relief from foreign withholding taxes particularly if the residents recipient falls in one of the following categories:

– if more than *one half* of the treaty-favoured foreign income is used

1. For a detailed analysis in English see Walter Meier, Swiss Tax Treaty Anti-abuse Rules, Tax Planning International Review, Volume 8 (1981), No. 12, page 15 et seq.

(directly or indirectly) to satisfy claims of persons not entitled to treaty benefits ('pass-through'-companies);
- if an entity substantially controlled by non-residents (by participation or in some other way) does not distribute yearly at least 25% of the treaty-favoured gross income as dividends ('accumulation'-companies);
- if the interest-bearing credit account is greater than *six times* the amount of share capital (plus open reserves) or if debts bear interest exceeding the rates periodically fixed by the Federal Tax Administration;
- if a resident receives the income only on a *fiduciary* basis;
- if the treaty income benefits a *family foundation* controlled by non-residents;
- if the recipient is a *partnership* with a seat but without exercising a trade or business, in Switzerland.

2.b. The tax treaties concluded by Switzerland with Belgium, the Federal Republic of Germany, France and Italy contain similar *anti-abuse clauses* and, in addition, rules directed against companies enjoying cantonal (and municipal) preferential tax treatment. These treaty clauses apply equally to taxes withheld at source and levied by ordinary assessment in the other treaty country.

J. Schedule of Withholding Taxes

Dividends paid by a company which is a resident of Switzerland and certain categories of *interest* (see section B 1.b.) arising in Switzerland are subject to the Federal Anticipatory Tax at a rate of 35% withheld at source.

No Federal withholding tax is levied on *royalties*.

The tax treaty relief and non-refundable Swiss taxes for residents of the following countries are listed below:

	Dividends		*Interest*	
	Relief	*Non-Refundable Tax*	*Relief*	*Non-Refundable Tax*
Belgium	20	15	25[1]	10[1]
Participation of at least 25%	25	10		
Canada	20	15	20[1]	15[1]
Denmark	35	0	35	0

	Dividends		*Interest*	
	Relief	*Non-Refundable Tax*	*Relief*	*Non-Refundable Tax*
France	30	5	25	10
Certain participations of at least 20%	20	15		
Germany (Federal Republic)	20[1]	15[1]	35[1]	0[1]
Greece	20	15	25	10[1]
Participation of at least 25%	30	5		
Ireland	20	15	35	0
Participations of at least 25%	25	10		
Italy	20	15	22.5	12.5
Japan	20	15	25	10
Participations of at least 25%	25	10		
Luxembourg[2]	0	35	0	35
Netherlands	20	15	30	5
Participations of at least 25% (anti-abuse clause)	35	0		
Norway	30	5	30	5
Portugal	20	15	25	10
Participations of at least 25%	25	10		
Spain	20	15	25	10
Participations of at least 25%	25	10		
United Kingdom	20	15	35	0
Participations of at least 25%	30	5		
United States of America	20	15	30	5
Participations of at least 95% (anti-abuse clause and additional requirements)	30	5		

1. For special cases see tax treaty rules.
2. No tax treaty concluded.

K. Special Types of Companies

1. PARTICIPATION (HOLDING) COMPANIES

1.a GENERAL

A participation (holding) company is, in a broader sense, a company that is holding substantial equity participations in other companies. Although there is no harmonized legal terminology in this regard, two types of participation companies are ordinarily distinguished:

- *Holding companies:* A company qualifies as a holding company – sometimes the term 'pure' holding company is used – when its exclusive or primary purpose is the holding and the administration of substantial equity participations in other (resident or non-resident) companies.
- *Mixed participation companies:* A mixed participation (or holding) company may be defined as one that owns substantial equity participations in other (resident or non-resident) companies, but that also carries on industrial, manufacturing or commercial operations. Both types of participation companies enjoy a special tax treatment which depends on the tax jurisdiction and the size of the investment in participations.

1.b FEDERAL DIRECT TAX

The *holding company* and the *mixed participation company* are entitled to a reduction of the income tax on that part of the income which is derived from qualified participations. To qualify for the *holding 'reduction'* pursuant to the Federal Direct Tax Act (Article 59), the recipient company must hold participations with a *'substantial influence'* ('massgebender Einfluss'/'influence déterminante'). A participation is deemed to be 'substantial' if, at the beginning of the tax liability, it amounts to at least 20% of the share capital or 2 million Swiss francs in the share capital of the distributing company.

The income tax payable by a *participation company* is reduced in the same proportion that its net income from qualified participations bears to its total gross income. Therefore, if the entire income of the participation company is derived from qualifying participations, in principle, no Federal income tax is payable. For operating companies which also hold substantial participations the total Federal income tax is reduced roughly in the same proportion that the income derived from qualifying participations bears to the total gross income.

Income from *qualifying participations* is basically dividends, stock dividends, extraordinary distributions such as bonuses, liquidation dividends and constructive dividends. Total gross income consists, as a general rule, of profits derived from the operational activity after deducting business expenses allocable exclusively to that activity, income from participations, interest, rent, royalties, commissions, capital gains, revaluation gains and other income.

No reduction is available for *capital tax* purposes.

1.c CANTONAL TAXATION

All cantons except one exempt the (pure) holding company from income taxation. Some cantonal tax laws require that the participations or the management of participations be 'exclusive'. Most cantons exempt holding companies from income taxation if the holding of participations is merely a 'primary' or 'predominant' purpose. The Zurich tax practice, for instance, requires ordinarily that at least 75% of the income must be derived from qualified participations and at least 75% of the assets consist of such participations. Some cantons set forth lower minima.

Mixed participation companies under most cantonal tax laws enjoy identical or similar tax reductions as outlined above with respect to Federal tax purposes.

In a majority of cantons, a *capital tax* reduction is provided for holding companies and in some jurisdictions also for mixed participation companies. The special tax treatment granted to holding and participation companies is primarily designed to avoid triple taxation of profits derived from participations (because the distributing company has already paid taxes on its net income, and another tax is charged to the ultimate shareholder). It is therefore inaccurate to refer to the 'holding exemption' or 'participation reduction' as a tax 'privilege'.

2. DOMICILIARY COMPANIES

A domiciliary company generally is defined as an interposed company that has merely its seat (place of registration) in one of the Swiss cantons but that does not engage in any trade or business within Switzerland.

Domiciliary companies are frequently used as a non-resident's legal entity to hold intangible assets such as patents, trademarks, copyrights, or securities, or to own real property located outside

Switzerland, or to engage in a business or to perform services exclusively outside this country.

On the *Federal* level, domiciliary companies are fully subject to the income and capital taxation like other companies (see section A). However, a number of *cantons* grant special treatment to domiciliary companies by which such entities are either exempt from cantonal (and municipal) income taxation or taxed only on a certain percentage of the income or at a reduced rate. Special treatment is normally denied if the company has its own office or its own staff in the canton, but a few cantons permit a limited office and staff to be present.

Some cantons permit domiciliary companies to carry on certain operations in Switzerland with the result that income derived from Swiss sources in normally taxed and non-Swiss income items are taxed at a reduced rate. Normally, the majority of the corporate stock of such a 'mixed company' must be held by non-residents and only a relatively small percentage of the overall income may be derived from Swiss sources for the special treatment to be available. The cantonal *capital tax* is usually levied at a reduced rate.

Internationally, it is important to bear in mind that the *tax treaties* concluded by Switzerland with Belgium, France, the Federal Republic of Germany and Italy exclude Swiss companies controlled by non-residents from the treaty benefits on interest and royalties if such entities do not pay full cantonal and municipal taxes on such income derived from sources within the respective treaty country.

In addition, a number of countries have enacted domestic legal measures to nullify or penalize any tax benefits obtained by interposing or using such types of entities such as the *'Subpart F'-rules* in the United States and the *'Aussensteuergesetz'* in the Federal Republic of Germany.

3. SERVICE COMPANIES

The term 'service companies' is generally used for companies that do not exercise a commercial or industrial activity of their own but perform administrative, financial, marketing or auxiliary services or any other assistance for affiliated companies located outside Switzerland. Such a company may have its own staff and its own office facilities in Switzerland.

The service companies are subject to special rules with respect to the *computation* of the taxable net income. They are taxed on a minimum income equivalent to that which an independent company would earn under identical or similar circumstances. For *Federal* tax

purposes, the taxable net income deemed to be derived from rendering such services amounts, as a rule, to at least one tenth of the total expenses incurred in connection with such service activities or to at least one sixth of the salaries paid by the service company. Under particular circumstances, the tax authorities may also determine a minimum net income. Additional income such as royalties or interest derived from investments has to be added to this minimum income (see Circular Letter issued by the Federal Tax Administration on 1 June 1960).

Some *cantons* request a higher minimum net profit ranging between 10 and 20% of the total expenses.

With respect to those cantons in which taxes are not a deductible expense, the taxes paid in the relevant fiscal year must be added to the minimum net income.

IV. LABOUR ASPECTS

A. Principles of the Law on Employment

1. As a rule an individual employment contract need not follow any particular form. However, certain provisions are valid only if agreed upon in writing (such as prohibitions against competition following termination of the employment relationship).

If the term of the employment contract is not for a fixed period of time, the first month is considered a probationary period, unless determined otherwise by agreement or a standard or collective employment contract.

2. No minimal salaries and wages are required by law. However, such standards have widely been agreed upon by collective bargaining.

According to Federal law, the employer must grant the employee at least four weeks vacation. The minimum is five weeks if the employee is not yet 20 years old. In practice four weeks vacation are standard.

3. If the employment relationship has been entered into for a fixed period of time, it terminates without notice upon the expiration of such a period.

If the relationship has not been entered into for a fixed period of time and if such a period is not evident from the purpose of the work, notice may be given by either of the contracting parties. Notice periods must not differ for the employer and the employee.

If an employment relationship has lasted less than one year and unless otherwise determined by agreement, standard or collective employment contract, it may be terminated effective at the end of the month following the date of notice. If the employment relationship has lasted more than one but less than ten years, the notice period is two months. After ten years of service, it is three months. However, the employer cannot terminate the employment relationship during compulsory Swiss military or civil defence service, during the first thirty days (ninety days if the employment relationship has lasted more than one, 180 days if it has lasted more than six years) of the employee's inability to work due to illness or accident not caused

by the employee's fault, during pregnancy and sixteen weeks after child-birth and in certain other cases.

For valid reasons both the employer and the employee may at any time terminate the employment relationship without notice. A valid reason is considered to be any circumstances under which the terminating party cannot in good faith be expected to continue the employment relationship. In case of notice based on unlawful reasons (e.g. membership to a trade-union, military service etc.) employee and employer have the right to sue the other party for damages.

Severance pay is due upon termination of the employment relationship only if the employee is at least fifty years of age and has been employed for twenty or more years. Even in this case the employer is not obliged to give severance pay if a personnel welfare institution must make future welfare payments which exceed the contributions to be made by the employee.

B. Labour Procedures

Many collective employment contracts have been concluded between employers or their associations on one side and employees' associations or labour unions on the other one. The provisions of such collective employment contracts concerning the entering into, the content and termination of the individual employment relationship are directly applicable to the employers and employees organized in the participating associations or labour unions. They may not be eliminated by stipulation unless the collective employment contract provides otherwise.

Under certain conditions both the Federal as well as cantonal governments can declare that the terms of a collective employment contract are applicable to all employers or employees of a business sector or profession even if they are not members of the contracting parties. This unusual power is not often used.

C. Works Council, Co-determination, Compulsory Profit Sharing and Pension Plans

1. No law requires the institution of works councils, However, works councils are often installed pursuant to collective employment contracts. The scope of their authority is usually limited to questions concerning the working conditions.

2. Although there has been some discussion, no scheme of compulsory co-determination exists in Switzerland. Some years ago two proposals for the introduction of co-determination were rejected in a public vote.

3. No compulsory profit-sharing schemes exist in Switzerland. Since 1985 pension schemes are compulsory for the parts of yearly salaries which exceed SFr 18'000.– but not SFr. 54'000.–.

D. Residence and Work Permits

1. The economic benefit resulting from the presence of non-resident enterprises through resident subsidiaries or branches in Switzerland is widely recognized. In view of the relatively high proportion of resident aliens (1988 1'032'700 compared to a total population of 6'620'000) the Swiss Government is nonetheless under sociopolitical pressure to apply a restrictive policy in granting permits and to stabilize the number of resident aliens.

2. Visitors *not engaged in a gainful employment* and staying not longer than three months or, in case of repeated visits, not longer than six months within one year in Switzerland do not need a permit. In case of an extension of a visit over these limitations, the visitor must apply for permission to prolong his stay.

Persons visiting Switzerland for *business* or other *lucrative purposes* must ordinarily apply to a permit if they stay in Switzerland eight days or longer within three months or, in case of repeated visits, thirty-two days or longer within one year. This permit is ordinarily obtainable without difficulty.

3. A more cumbersome procedure is applicable to aliens intending to exercise as *residents* a *lucrative activity* in Switzerland. The prospective employer must apply for a *work permit* ('Arbeitsbewilligung'/'permis de travail'). The system is based on regulations providing for cantonal and Federal quotas generally over a twelve-month period. The permit policy is quantitatively restrictive but endeavours to make a qualitative improvement of the labour market. Apart from purely national aspects, there are several criteria for granting permits. One concerns management staff, qualified experts or employees with a key function inside a company whose presence in Switzerland is likely to create job opportunities for a considerable number of resident employees. Another important consideration for easier access of new enterprises is evidence

that the establishment or expansion of operations be of significant cantonal or regional importance.

The regulations also provide for certain exceptions from applying for a regular residence permit. One relates to personnel that is employed in Switzerland for no longer than three months in one year, enabling non-resident companies to transfer temporarily key personnel to Switzerland for setting-up a Swiss subsidiary or branch or for control functions within Switzerland. Another exception covers additional residence permits for a period of up to twelve months with respect to executives or highly qualified experts of internationally integrated companies for specific purposes. Generally, an intensive job rotation is disadvantageous because of the necessity to undergo the permit procedure basically in each case (an entity has no basic right to a share of a given quota).

4. Upon granting of the work permit, the employer must apply for a *residence permit* ('Aufenthaltsbewilligung'/'permis de séjour') valid ordinarily for one year. This residence permit does not necessarily cover the employee's family.

5. A permit for *permanent residence* ('Niederlassungsbewilligung'/'permis d'établissement') is obtainable only after an extended stay in Switzerland (ordinarily ten years, for nationals of certain countries five years).

V. REFERENCE MATERIAL

1. List of Abbreviations

AG	Aktiengesellschaft (Joint Stock Corporation)
AHV	Alters- und Hinterbliebenenversicherung (Old Age and Survivors Insurance)
AI	Assurance-invalidité (Disability Insurance Plan)
AVS	Assurance-vieillesse et survivants (Old Age Survivors Insurance)
FTA	Federal Tax Administration
GmbH	Gesellschaft mit beschränkter Haftung (Limited Liability Company)
IV	Invalidenversicherung (Disability Insurance Plan)
SA	Société anonyme (Joint Stock Corporation)
Sàrl	Société responsabilité limitée (Limited Liability Company)

2. Statutes

- Obligationenrecht/Code des obligations, of 30 March 1911, as amended
- Beschluss über die direkte Bundesleuer/Arrêté concernant l'impôt fédéral direct, of 9 December 1940, as amended
- Bundesgesetz über die Verrechnungssteuer/Loi fédérale sur l'impôt anticipé, of 13 October 1965, as amended
- Bundesgesetz über die Stempelabgaben (StG/Loi fédérale sur les droits de timbre (LT), of 27 June 1973, as amended
- Bundesratsbeschluss betreffend Massnahmen gegen die ungerechtfertigte Inanspruchnahme von Doppelbesteuerungsabkommen des Bundes/Arrêté du conseil fédéral instituant des mesures contre l'utilisation sans cause légitime des conventions conclues par la Confédération en vue d'éviter les doubles impositions, of 14 December 1962, as amended.

Other statutes are referred to in the text and in the bibliography.

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