

*Irish Business Network  
Switzerland  
Event of 14 June 2017 in Lausanne*



*Welcome!*

# Example



# *Swiss Tax System*

## **1. Level of Taxation**

- Companies and individuals are taxed at three different levels in Switzerland:
  - national level (federal taxes)
  - cantonal level (cantonal taxes)
  - communal level (communal taxes)
- The larger portion of taxes is levied by the cantons and municipalities, the smaller portion at the national level.
- Companies are taxed at their place of value creation, i.e. where the company is based or where it carries out its business activities.

# *Individual Tax*

## **2. Tax Rates for Individuals**

- Individuals (employees) pay taxes at their place of residence.
- Federal tax varies by income, while cantonal and communal tax rates vary by place of residence, income and size of assets.
- Taxation is progressive
- Federal income tax (maximum rate): 11.5%
- Cantonal and communal income taxes (examples):
  - Taxable income of CHF 50'000: 5% - 13%
  - Taxable income of CHF 500'000: 11% - 27%
- Cantonal and communal taxes on assets (examples):
  - Assets of CHF 100'000: 0% - 0.225%
  - Maximum rate: 0.89%

# *Individual Tax*



## **3. Source Tax**

- Foreign employees who do not possess a permanent residence permit C are taxed for their earned income by a tax deduction at source.
- If the source-taxed income exceeds CHF 120'000 per annum, a tax declaration has to be submitted.
- In other cases the tax at source is definitive. The employee can, however, assert a special deduction in a separate process.

# *Corporate Tax*

## **4. Tax Rates for Corporations**

- Federal taxes are charged at a flat rate, while cantonal tax rates vary by location and sometimes by level of capital or profit. Taxes are currently levied in the following ranges:
  - Direct federal taxes on profits: 8.5%
  - Cantonal tax on profits: 5.9% - 16%
  - Cantonal tax on capital: 0.05% - 0.3%
- Total tax burden: 14.5% - 25%
- Direct federal taxes are charged at a regular rate of 8.5%. Because taxes are levied on after-tax profits, this yields an effective tax rate of 7.83%.
- Other reductions through company-specific tax models
- Tax optimization makes it possible to lower tax rates to below 10%. Companies may solicit a binding (advance) tax ruling for their effective tax burden from the tax authorities. Tax benefits are granted on a case by case basis, depending on the location and the type of business.

# *Legal Form of the Business*

## **Criteria for choice of legal form:**

- Risk of business operations / Limitation of liability
- Capital requirements of business operations
- Financial means of business owner
- Growth potential / Exit strategy
- Tax



# *Swiss Labour Law*

## **1. Legal Basis of Swiss Labour Law**

- Article 319 to 362 of Swiss Code of Obligations ("CO")
- Federal Labour Act
- Federal Act Governing the General Applicability of Collective Labour Agreements

## **2. Overview on Principles of Swiss Labour Law**

- Swiss Labour law is fairly employer friendly:
  - Within the limits of mandatory provisions of the CO and the Federal Labour Act (both mainly protecting the employee) parties are free to determine their employment relationship
  - Employer is free to terminate the employment agreement without payment of severance package (general rule)

# *Swiss Labour Law*

## **3. Entering into Individual Employment Agreement**

- No specific form requirements
- Minimum content of employment agreement: Parties, function of employee, working hours and salary



# *Swiss Social Insurance and Occupational Pension System*

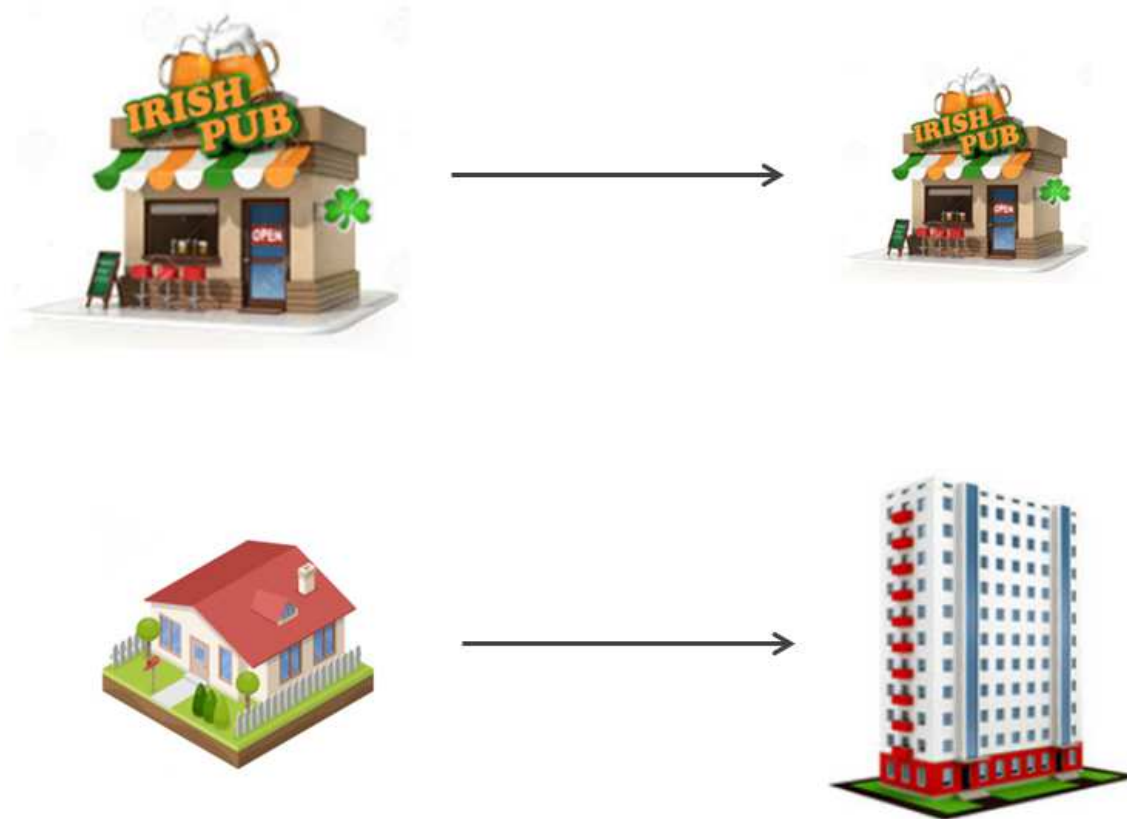
## **1. Overview on Social Insurances and Pension System**

- Retirement insurance
- Disability insurance
- Unemployment insurance
- Accident insurance
- Maternity insurance
- Occupational pension system

## **2. Premiums for Social Insurances and Occupational Pension System**

- Social insurance premiums: Shared equally between employer and employee
- Pension system premiums: Employer has to pay at least 50%; percentage of premium increases with age of employee

# *Termination of Employment and Rental Agreement*



# *Overview on Termination of Employment Agreement (Indefinite Term)*

- Employer is free to terminate employment agreement
- Minimum permissible notice period under Swiss law is one month
- Protection of employee against unlawful termination, termination with immediate effect and termination at improper time
  - entitlement to compensation in case of unlawful termination
  - termination notice is void if served at improper time
- No mandatory entitlement for severance package except in case of
  - mass dismissal exceeding legally defined thresholds
  - employees older than 50 years with minimum years of service of 20 years
- Employee can request reasons for termination in writing

# *Consequences of Termination*

- All claims resulting from the employment relationship become due
- Employer has to provide employment certificate/reference
- Employer has to grant additional time for job search
- Employee has to uphold duty of care vis-à-vis employer during notice period
- Employee has to uphold limited duty of loyalty vis-à-vis employer during notice period
- Employee has to uphold duty to protect confidential information even after the termination
- Residence entitlement: EU/EFTA-citizens may stay for at least 6 months to seek new employment; job-seeker permit required

# *Overview on Court Proceedings in Case of Labour Disputes*

- Proceedings start with compulsory preliminary conciliation
- If no settlement is reached proceedings continue in front of district court
- Competent are the courts at the domicile or registered office of the defendant or where employee normally carries out work
- Claims below CHF 30'000 are assessed in simplified and shortened proceedings

# *Unemployment Benefits*

## **1. Entitlement to Unemployment Benefits**

- Resident in Switzerland
- 12 month insured working period in the last 2 years before application for unemployment benefits; insured working period of EU/EFTA-citizen in an EU/EFTA member state will be taken into account
- Unemployed person must be able to take up work
- Unemployed person must make sufficient efforts during notice period to find reasonable employment (to be documented)
- Number of daily allowances depends on number of months worked in the last 2 years and age of unemployed person
- Certain restrictions of entitlement of employees (including spouse) holding an executive position or majority stake in the employer



# *Unemployment Benefits*

## **2. Application for Unemployment Benefits**

- Immediately upon reception of termination notice (including application to regional employment centres ("*RAV*"))
- *RAV* provide assistance in application for unemployment benefits and job seeking
- Employer must provide confirmation of employment incl. reasons for termination

# *Swiss Tenancy Law*

## **1. Overview on Principles of Swiss Tenancy Law**

- Legal Basis article 253 to 274 of CO and ordinances on rental agreements
- Fairly tenant friendly; many compulsory provisions protecting the tenant such as
  - protection against abusive rents
  - protection from increases in rent
  - protection from termination of rental agreement or right to extension in case of hardship

# *Swiss Tenancy Law*

## **2. Termination of Rental Agreement**

- Subject to notice periods and termination dates
- Tenant may terminate agreement outside the termination dates if suitable new tenant is offered

## **3. Overview on Court Proceedings in Case of Rental Disputes**

- Proceedings start with compulsory preliminary conciliation
- Competent are the courts at the place of immovable property
- Claims below CHF 30'000 assessed in simplified and shortened proceedings

# *Matrimonial Property Regimes in Switzerland*

1. Contribution in jointly acquired property
2. Separation of property
3. Community of property

# Contribution in Jointly Acquired Property



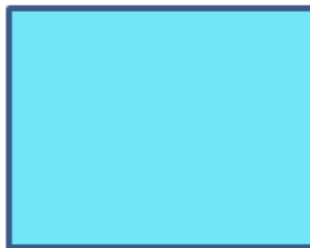
Situation during the marriage

husband

own  
property



jointly acquired  
property



wife

jointly acquired  
property



own  
property



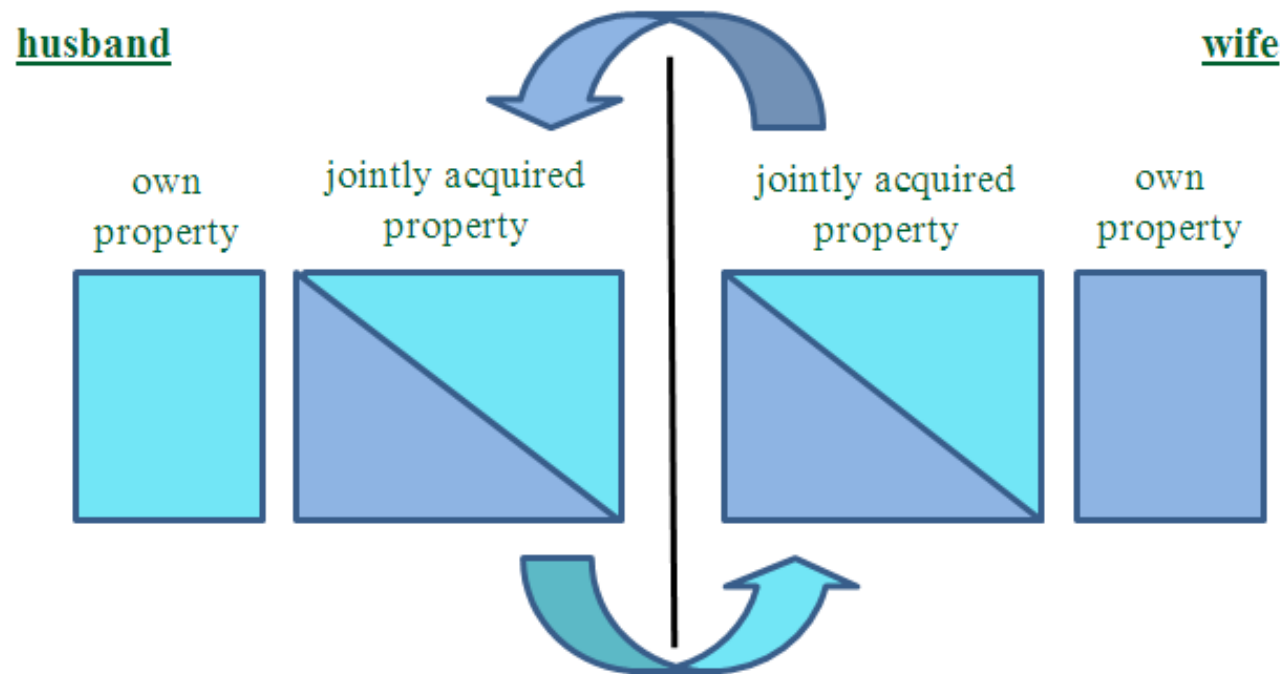
**Own property:**

Assets brought into the marriage / inheritances / gifts

**Jointly acquired property:**

Assets acquired *for valuable consideration* during marriage /  
income from own property

# *Dissolution of the Matrimonial Property Regime*



50 % participation in the surplus of the other spouse, and vice versa. The surplus is the value of the jointly acquired property *including* the assets added in and claims for compensation *minus* the debts encumbering the jointly acquired property.

# *Contractual Modifications*

- Postnuptial agreement
  - Has to be executed as a public deed
  - Signed by the parties in front of a notary public (in Lausanne: *le notaire*)
  - Possible solution (in the case at hand):
    - The spouses may declare jointly acquired property to be own property which are relevant for the profession or business of a spouse.
    - As a result, such assets will not be withdrawn in the event of death or divorce.
- The company would qualify as own property and not be split in the event of dissolution of the matrimonial property regime.

# *Further Modifications*

- To a certain extent a different participation in the surplus (opposite to the 50%-portion) may be agreed on
- The parties may arrange another matrimonial property regime
  - Separation of property
  - Community of property





# *Brief Overview on the Succession Regime in Switzerland*

- On the death of the deceased, the estate passes directly to the heirs (either under the will or the intestacy rules), who automatically ("*ipso iure*") become joint owners of the entire estate
- No probate proceedings in Switzerland
- All rights and liabilities of the deceased pass to the heirs at the time of its death
- The heirs form a community of heirs and jointly hold all rights and liabilities of the estate
- Forced heirship rules in Switzerland

# *International Succession Law*

## **1. Jurisdiction**

- Jurisdiction is given by law at the last domicile in Switzerland
  - if an Irish citizen deceases at his last domicile in Lausanne, the civil court of Lausanne (*Tribunal d'arrondissement de Lausanne*) has jurisdiction over this estate
- Reservation for real estate abroad

# *International Succession Law*

## **2. Applicable Law**

- The estate of a person with last domicile in Switzerland is governed by Swiss law
    - "Swiss law" means "Swiss inheritance law" (including the forced heirship rules)
  - A foreign national with domicile in Switzerland may choose by last will or inheritance agreement the law of his hometown/-country:  
**professio juris**
    - The "deselecting" of compulsory portions by an Irish citizen would not violate Swiss public policy
- *In (international) succession matters there is often action required and need for coordination.*

# *Statutory Provisions on Succession*

- If a deceased person did not make any testamentary dispositions (e.g. wills, inheritance agreements), the provisions of the Swiss Civil Code apply.

	<b>Spouse</b>	<b>Child</b>	<b>Child</b>
<b>Statutory Share (intestate)</b>	$\frac{1}{2}$	$\frac{1}{4}$	$\frac{1}{4}$

- The nearest heirs of a deceased person are his/her issue
- Children inherit in equal parts
- Surviving spouses (and registered partners) receive one-half of the estate, where they have to share with the deceased's issues

# Forced Heirship

- The surviving spouse **and** the children (as well as the parents) have a right to a compulsory portion of the estate (forced heirship; *Pflichtteil*)

	Children	Spouse	Freely disposable Quota
Forced Heirship	$\frac{1}{2} \times \frac{3}{4} = \frac{3}{8}$	$\frac{1}{2} \times \frac{1}{2} = \frac{1}{4}$	$\frac{3}{8}$

- In contrast to Ireland where (only) the surviving spouse has a forced heirship which amounts to  $\frac{1}{3}$  of the estate if there are surviving children

# *Tax Consequences*



## **Taxation of the Company and its Shareholders**

- Difficulties in a start up phase might have generated losses. Business losses may be carried forward for seven years and offset with future profits. Carry-back is not allowed.
- After the company completes its financial year and the profit is calculated, the shareholders are entitled to a share in the annual profit. A portion of the net profit, the dividend, is then distributed to the company shareholders. The Swiss dividend is allocated at a fixed amount per share. A dividend reduction of 40% on the federal level and of 40% - 50% on a cantonal level is foreseen.
- Capital gains on personal movable property e.g. the sale of the shares of a company are exempt from taxation in Switzerland.

# *Instruments of Succession Planning under Swiss Law*

## **1. Forms of Testamentary Dispositions**

- Last will
  - Handwritten
  - Notarial Deed
  - Audiovisual (draft article 506 Swiss Civil Code)
  - (Oral)
- Inheritance Agreement
  - Notarial Deed before a notary public and two witnesses



# *Instruments of Succession Planning under Swiss Law*

## **2. Selection of Possible Solutions**

- The company's shares may be transferred to the next generation
  - against payment
  - without or partially payment in terms of a gift or buyout of an heir
  - by means of creating a special fund such as a family holding, foundation or a trust
- Inheritance agreement with the non-business successors
  - can allow buyouts from the estate during lifetime of the testator against renunciation to the inheritance

→ *planning and coordination needs*



# *Swiss Inheritance and Gift Taxes*

- Inheritance and gift tax is only levied at cantonal and communal level.
- Inheritance tax is generally due on a person's worldwide assets.
- All cantons unless the canton of Schwyz levy inheritance tax if the deceased has been a resident of the respective canton, or if real estate located in the canton is transferred.
- Neither the canton of Schwyz nor the canton of Lucerne levies gift tax.
- In all cantons, spouses are exempt from inheritance and gift taxes, and most cantons also exempt direct descendants from such taxes.
- Tax burden varies from canton to canton and depends on the amount as well as the degree of blood relationship between the deceased and the heir.

# *Questions and Answers*

*Any Questions?*

# *Contact details*

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