



SWITZERLAND

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As a direct neighbour of the Federal Republic of Germany, Switzerland has links to Germany through largely sharing a common language and is also very attractive for German companies due to its sales market and also as a location for holding companies for reasons of tax optimisation. The macroeconomic conditions in Switzerland are similar to those found in Germany and in many cases are even more favourable. Despite the perceived high-price image of Switzerland, the country is characterised by a number of innovative commercial and labour law details.

The following remarks should provide an overview of which areas within the framework of financial accounting are available for possible investors “from the big canton” (i.e. Germany, notes the editor) in our neighbouring country and which ones have interesting features.

Commercial law (the Swiss code of obligations)

The principle in Switzerland that tax accounting should be based on commercial accounting

In terms of commercial law, since the German Accounting Law Reform Act in 2010 Germany has more or less abandoned the authoritative principle that tax accounts are generally based on financial statements. This principle, however, is still very much followed by our neighbours: For this reason there are a number of regulations which can apply to the Swiss trade balance according to the obligation law (in Swiss “OR”) for the tax balance sheet such as for inventory, receivables and at the present time the more generous (“two-thirds”) depreciation is granted for fixed assets in comparison to the German commercial code. The Swiss tax authorities thereby allow the formation of hidden reserves. In practice this means that companies preparing financial statements must maintain an internal list of hidden reserves and have to list the annual net changes in the notes. Thereby items can be booked to different balance sheet positions. Depending on the business model, in comparison to Germany here it is possible to establish hidden reserves which can be partly substantial as permitted by conservative balance sheet rules. This is allowed by the Swiss financial authorities.

Flexibility with financial accounting

The percentage of completion (POC) method, usually only allowed by the Anglo-American financial accounting standards which under certain conditions allows long-term manufacturing companies to realise profits already before so-called acceptance, is recognised by the Swiss obligation law in keeping with IFRS which means that here if the required conditions are met then valuation differences can be avoided. Such a possibility is only available to a limited extent under German commercial law as far as “partial realisation of profits” can be represented.

Restrictions with interim dividends

In many cases and countries there is a possibility that, for example, a German parent company can in advance, i.e. prior to the balance sheet date, request an interim dividend for example from a domestic subsidiary. This is not possible with Swiss subsidiaries. The financial statement must be approved by the shareholders' meeting and only then is it possible to approve an ordinary dividend paid to the shareholders or parent company. It is therefore recommendable if required as a bridging measure to conclude an intercompany loan agreement with the German parent company in order as required to provide the necessary liquidity at short notice to the parent company.

Comfort letter from foreign parent company in favour of a Swiss subsidiary

From the viewpoint of the parent company, this type of declaration is usual and widespread and in particular if the case in question concerns the founding of a new or start-up company which at the begin of its operations has not yet been able to generate a profit. In such cases in many countries in order to secure the status of a going concern the affected subsidiary receives a supporting comfort letter from the parent company which satisfies the requirements necessary to continue company operations.

Depending on the nature of the comfort letter, the parent company or group parent undertakes to guarantee the continuation of the subsidiary whether this is achieved through the provision of liquidity or through other measures. The advantage is that such a declaration made by the parent company in the first instance due to its commitment character need not require an immediate outflow of liquidity. In Switzerland these declarations are in principle and in particular when they are made by foreign shareholders not sufficient and are therefore in the case of a statutory audit requirement are considered in a critical light by the Swiss auditors.

Financial accounting for start-up costs

In future, start-up costs, capital increase costs and organisation costs may no longer be capitalised. From a tax point of view they are deemed to be a part of business expenditure. The extraordinary depreciation required according to commercial law of existing capitalised start-up costs, capital increase costs and organisation costs at the time of the first application of the new financial accounting law is regarded under tax law as business expenditure. In this respect, the Swiss obligation law conforms to international practice.

IFRS for German medium-sized “Mittelstand” companies and Swiss GAAP FER

While in the European Union after a long period of preparation a decision was finally taken in 2009 to adopt a standard for small to medium-sized enterprises (SME), the Swiss had introduced the pioneering Swiss GAAP FER as early as 1984 to a counterpart to Swiss obligation law and full implementation of the international financial reporting standards (IFRS).

While the Swiss obligation law primarily seeks to protect the creditor, the Swiss GAAP FER seeks to communicate a true and fair view of the assets, finance and income of the company. This therefore primarily satisfies the requirements of the potential recipients (e.g. banks, investors, etc.). Compared to other standards (IAS/IFRS and US GAAP) the Swiss GAAP FER impresses through simplicity, but is still able to set a good standard to provide figures which are accepted by the potential recipients.

The advantages of the Swiss GAAP FER are:

- › Low complexity
- › Standard recognised by shareholders and lenders
- › Basis for the management of enterprises
- › Expenses for adjustment remain reasonable
- › Swiss regulations which correspond to the local expectations
- › Application also possible for consolidated accounts.

The following provides a short overview of the framework of the Swiss GAAP FER:

The Swiss GAAP FER focuses on the financial accounting of small to medium-sized organisations and company groups in Switzerland. Small organisations have the possibility of only applying the framework and selected core standards. Medium-sized organisations are obliged to adopt the core standards and the remaining SWISS GAAP FER regulations.

The following are criteria for the application of the core standards:

- › A balance sheet total of 10 million CHF.
- › An annual turnover of 20 million CHF.
- › An annual average of 50 full-time workers.

If two of the criteria in two consecutive years are not exceeded, the organisation may apply the core standards.

Certain publicly listed companies in Switzerland (only domestic standard, not the standards for investment and real estate companies) may apply SWISS GAAP FER, i.e. in these cases the regulations of the IFRS are not mandatory.

Disclosure

As far as a non-publicly listed group with parent company in Switzerland is subject to the preparation of group accounts there, these Swiss group accounts are not subject to disclosure. In the absence of an exemption regulation, German integrated sub-groups or companies on the other hand then have to do this in Germany.

Auditing

Audit scope: limited audit vs. regular audit in comparison to Germany

In contrast to Germany in Switzerland there is no legal regulation under obligation law with regard to the special audit scope of a "limited" audit.

This is a limited statutory examination according to an internal audit reference manual or standard.

This Swiss peculiarity can best be compared with the regulations of the accounting standard 900 of the Institute of Public Auditors in Germany whose subject matter consists of the "review of annual financial statements".

Furthermore, not all of the financial statements are subject to a statutory audit requirement, whereby if there are less than ten employees there is the possibility of an opt-out, i.e. the right to dispense with an audit.

In order to increase trust in the information contained herein there is the possibility of having a critical appraisal made on the basis of a plausibility assessment of an auditor.

In the following situations this is in principle possible:

- › Published quarterly reporting or for example prior to a public listing where the effective date is more than four months after the last annual financial statement or consolidated financial statement.
- › Small companies not subject to a statutory audit requirement where the shareholders and the company management are not identical.

In this case the type and scope of the audit actions are usually less demanding than the execution of an audit of the annual financial statement and are therefore associated with lower costs.

Although the review does not replace the legally prescribed audit of the annual financial statement, it does offer the possibility – depending on its orientation and assignment – of providing a certain security with regard to the significance of an annual financial statement or interim statement.

This is of particular interest for:

- › annual financial statements of companies not subject to a statutory audit requirement (e.g. small joint stock companies) in order to obtain a certain degree of security regarding the annual financial statement,
- › subsidiaries which have to be included in consolidated accounts,
- › the audit of reporting packages, and
- › the audit of individual balance sheet positions for shareholders or bank.

The conditions for a regular audit which is comparable to a statutory audit of the financial statement in Germany are such that in Switzerland a regular audit is mandatory when two of the following variables are exceeded in two consecutive financial years:

- › a balance sheet total of 20 million Swiss francs,
- › sales revenue of 40 million Swiss francs or
- › an annual average of 250 full-time employees.

Special bodies of the audit authorities

In contrast to other jurisdictions, in Switzerland, for example, with the joint stock company the audit expert (not only the audit expert, but also the auditor or just simply the audit authority) is a “body” of the company in a similar way as the board of directors and shareholders' meeting. The audit authority of a Swiss company must therefore be selected in the course of a shareholders' meeting and registered at the competent registry office with presentation of the nomination acceptance declaration. The audit expert of a company is also officially published in the commercial register.

Practical themes under labour law

In a number of cases, Swiss labour law is regulated differently to the labour law in Germany. The following describes a number of differences between the respective regulations of the two countries.

Working time

The average weekly working time in Switzerland is 40 hours. The work is usually carried out on the five weekdays. A maximum of two overtime hours can be made per day. Overtime hours must be converted into free time. If this is not possible, the overtime hours must be remunerated with an increase of 25 % over the normal wage (for overtime hours this 25 % increase can be removed in a contract, but not, however, overtime hours which exceed the weekly maximum working time. The weekly maximum working time for office personnel, technical employees and sales personnel amounts to 45 hours and 50 hours for all other employees).

Wage payment in case of sick leave

If an employee is sick or has an accident, the employer is obliged to continue payment of the wages if the employment relationship is older than three months or if the employment contract is for a fixed term of more than three months. In the first year of service the wage must be paid for three weeks further and after that for a "reasonable further period". In the course of legal interpretations over the years different practices have developed. As a result, today there are in particular the Bern, Zürich and Basel scales. It is therefore recommended as required to already fix the amount of sick pay to be paid in the employment contract, or alternatively sick pay insurance can be taken out.

Notice of termination of the employment contract

In Germany, in all cases where companies have more than 10 employees there has to be a reason for termination, including for a "standard" notice of termination, which is frequently referred to as "for operational reasons". In this case the social selection procedure must be observed, i.e. the company must cancel the employment of someone which in terms of social aspects including family, age, duration of the activity or severe disability requires the least safeguarding. This selection is difficult and as a result many notices of termination can be contested. In Switzerland there is no comparable regulation. The employer does not require a reason for a "standard" notice of termination. It is only necessary to observe the termination date (end of the month) and the notice period (see below). There are only a number of reasons where the law does not allow notice of termination such as in the case of a pregnancy.

The notice for a "standard" notice of termination is also considerably shorter than in Germany. In the trial period it is only 7 days and after that 1 month. After a year it lengthens to 2 months, and after to 10 years to 3 months. There are no further extensions. In Germany after 10 years it would already be 4 months and after 20 years even 7 months.

Holiday days

The statutory holiday days are regulated much in the same way as in Germany. In Switzerland there is a statutory right to a minimum holiday period of 4 weeks which with a 5 day working week corresponds to 20 working days. Many collective employment contracts and standard employment contracts, however, guarantee a higher entitlement to holidays. At least two free weeks can be taken consecutively.

The German Federal Holiday Entitlement Act refers to at least 24 holiday days, but also this means that with a 5-day week there are only 20 holiday days. In the individual employment contracts in Germany, however, deviations are usually made in favour of the employee and at the present time the average is around 27.5 days.

Parental leave

In Germany there is the possibility for both parents from the birth of a child until the child is 3 years old to take parental leave, whereby Switzerland completely lacks such a right. If a mother does not return to her place of employment immediately after the end of her maternal leave in Switzerland, she will lose her job, whereby the father practically has no possibility and is forced to take a holiday.

In Germany after the birth of a child a parental allowance is paid by the state for up to 14 months to the respective parent who takes parental leave which is currently usually 67 % of the net wage.

In Switzerland on the other hand the Federal Old Age and Survivors' Insurance (AHV) pays compensation to the mother for 14 weeks amounting to 80 % of the wage.