

Swiss Branch for International Head Office

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The following brochure includes initial information in connection with the registration and the operation of a branch in Switzerland. The legal and tax framework of a branch defers from the concept of the incorporation of a separate legal entity. However, a branch may conduct all operational business activities as the head office abroad and thus qualifies as a solid investment alternative in Switzerland.

Legal

A branch is no separate legal entity. It conducts by its nature the same business as the head office and constitutes a whole business together with the head office. Nevertheless the branch may be qualified as a business with a commercial, economical and operational autonomy. Legally still dependent from the head office, a branch is often referred to as a *“Zweigniederlassung”*, *“Betriebsstätte”*, *“Geschäftsstelle”* or *“Filiale”*.

A branch is further characterized as a long-term business operated by its own management. Branches are locally segregated from the head office and thus have own market access with own customers and own employees.

Subject to immigration approval, the branch can also employ expat employees. The application must be filed by the head office at the competent immigration authority in Switzerland.

A straight transformation of a branch into a legal entity is not possible according to the Swiss Merger Act. However, in a later stage the head office may incorporate a new legal entity and contribute the assets and the liabilities of the branch into this new company (under certain conditions the head office may use the equity surplus of the branch for the capitalisation of the new company).

The legal framework of the branch is governed by the Code of Obligations and the Direction of the Commercial Register.

Tax

From a tax point of view, the branch is subject to Swiss taxation according to the Bundesgesetz über die direkte Bundessteuer (DBG), the cantonal tax laws and the applicable double tax treaties (DTT). In a tax context the branch is referred to as permanent establishment (*“Betriebsstätte”*). A permanent establishment is generally defined as a fixed place of business where part or the whole activity of the enterprise is carried on. Please note that, it is possible that a business presence qualifies as a permanent establishment even if there is no branch registered from a mere legal point of view.

A branch is generally subject to the same income taxation on federal, cantonal and communal level as a legal entity. Under certain conditions it is recommended to ask the tax authorities for a binding ruling on the applied transfer pricing / profit allocation. A profit allocation between the head office and the Swiss branch must be done in order to calculate the taxable base in Switzerland. Depending to overall strategy, MME could try to minimize Swiss taxation (usually based on cost-plus remuneration) or allocate more profit to Switzerland.

Immigration

Subject to immigration approval, the branch can also employ expats employees. The application must be filed by the head office at the competent immigration authority in Switzerland.

Accounting and Financial Reporting

There is no strict law on the branch to maintain own accountancy and to issue a yearly financial reporting. However, for the purpose of the taxation of the branch and the commercial differentiation it is often required that branches conduct individual accounts and financial reportings.

Preliminary Issues before Registration

We advise to settle the following issues before starting the registration process:

- compliance check with the bank
- provisional approval of immigration authority for expats (if required)
- filing of tax ruling (if required)

Registration at the Commercial Register

The registration of the branch in the Commercial Register is not required in order to start the operation of a branch. However, we recommend registering the branch at the competent Commercial Register before starting with the branch business.

MME may support the head office in all steps required to set up a branch in Switzerland. In a first step we would need from the head office

...the following Documents:

- **Excerpt from the commercial register** of the head office, issued and notarized by the local and competent authority (not older than 30 days) with apostil
- Translation of the excerpt from the commercial register of the head office, issued by translator and notarized with apostil
- **Articles of association** of the head office, issued and notarized by the local and competent authority (not older than 30 days), with apostil
- Translation of the articles of association of head office, issued by translator and notarized with apostil
- **Copy of the passports** of the persons being registered with signatory powers for the branch in Switzerland (no translation is required).

...and the following Information

- Name of the branch
- Purpose of the branch
- Place of domicile, seat
- Name, address, birthdate etc. from the persons with representation rights
- Type of representation rights (sole signature or collective signatures).

Translator:

The translator must be qualified (e.g. official translator or translator with diploma). Please let us know, if you need our assistance to find a qualified translator.

Upon receipt of these documents and this information we will provide the following documents together with the relevant signing instructions:

- **Application** to the commercial register in Switzerland in German language (please let us know if you need a translation in English)
- **Minutes of the competent body** of the head office regarding the registration of the branch in German and English language

Please contact us, if you need our support.

Your Team



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MME is an innovative business law and tax firm providing comprehensive solution in legal, tax and compliance matters. We provide relevant, customised support and solutions for all company law issues and transactions. Our services comprise all areas of law, tax, finance and notarial work. This allows us to align our services with related interdisciplinary fields of expertise.

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