

Locating the family office

Elliott Goodman on the attractions of Switzerland



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For many years Hollywood has depicted the streets of metropolitan Switzerland as lined with guarded doorways where the protagonist, having presented minimal identification to enter, is able to access mysteriously numbered bank accounts or safety deposit boxes (ironically often crammed full of passports and other credentials). These unfortunate conceits – fuelled in recent years by (often politicised) anti-offshore rhetoric – misrepresent Switzerland's true position as a leading financial centre ideally suited to hosting the administrative core of a high-net-worth family's personal and business affairs.

Basing both the administration and asset management of a family's affairs in a single jurisdiction will often serve to improve the confidentiality (by retaining private information in a single location) and efficiency of managing those affairs – for example, by allowing frequent face-to-face meetings between the trustees or administrators and their advisors without the inconvenience and expense of cross-border travel. However, it is, of course, essential to consider a number of criteria when assessing a jurisdiction's suitability to host the family's centre of operations or family office.

Key criteria

In the first instance, political and financial stability will be critical. The family must

be safe in the knowledge that assets or title to them will not be subject to State interference. A benign tax regime and high standard of living is also likely to be desirable (particularly if members of the family will reside in the chosen jurisdiction). The quality of personnel within the jurisdiction will be a further consideration. High-net-worth families will always require the services of intelligent, knowledgeable and highly professional individuals across a wide range of disciplines (financial, fiduciary and legal) and any jurisdiction in contention for the base of the family's operations will need to demonstrate that its pool of talent is well stocked in this regard. The family will also wish to be able to access both the country and the advisors located there easily and without the inconvenience of significant time differences.

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Swiss solution

So how does Switzerland fare in meeting these criteria? First, there can be little question that Switzerland is highly stable from a political point of view. Indeed direct democracy is so ingrained in the Swiss political system that fundamental national policy and law is frequently determined by referendum. In addition, the country has retained its sovereignty and independence and is therefore well-placed to resist externally imposed regulation

or interference that might otherwise prove detrimental to the interests or confidentiality of a high-net-worth family resident outside the jurisdiction. Admittedly the international response to the recent financial crisis is seeing Switzerland's sovereignty strongly tested. However, the actions of the Swiss government thus far – for example, the renegotiation of double tax treaties to include OECD standards on the exchange of information for tax purposes – suggest that Switzerland is prepared to respond to its international partners' concerns in a reasonable manner (thereby preserving its global relationships) while guarding its sovereignty. In light of the ever-increasing external pressure on offshore jurisdictions it is worth noting that Switzerland continues to represent a country with a genuine choice in such matters while others, by virtue of their inextricable links to or dependence on those applying the pressure, may not.

With regard to economic stability, Switzerland has proven to be extremely robust time and again and, as the global recession has recently shown, the Swiss franc is often seen as a safe haven by those seeking sanctuary from volatile currency markets. Switzerland also offers a benign tax regime to individuals, companies and trusts. In the case of the latter, the Swiss ratification of the Hague Convention on the Law Applicable to Trusts and their Recognition in 2007¹ was followed by two tax circulars² which indicated that, in short, the cantons will not seek to tax trusts administered in Switzerland or the Swiss trustee and will instead look at the residence of the settlor or the beneficiaries when assessing the tax position of the relevant structure. If these individuals



are not resident in Switzerland during the life of the trust, no Swiss tax liability should arise. This tax neutrality renders Switzerland a very desirable location for the management of a high-net-worth family's affairs, particularly when great care has been taken to mitigate the family's tax liabilities in jurisdictions where they might otherwise arise.

Despite the recent abolition of the lump-sum tax regime for individuals in the canton of Zurich, on 29 January 2010 the heads of cantonal finance underlined their commitment to maintaining the forfait or pauschal basis of taxation for individuals across other cantons, albeit with likely revisions to the existing requirements and criteria for determining the taxable basis (for example, an anticipated increase in the current minimum taxable basis of five times the rental value of the taxpayer's home). The preservation of this favourable tax regime benefits the Swiss family office in a number of ways:

- (i) tax certainty can be achieved should a senior family member decide to relocate so as to be nearer the family's administrative heart, and
- (ii) being a location attractive to high-net-worth individuals by virtue of the favourable local tax regime serves to attract the type of institutions, high calibre professionals and international advisors most suited to protecting and the furthering the interests of such individuals.

Switzerland has reaped the rewards of attracting a third of the world's wealth (and its creators) by in turn attracting some of the world's most experienced and knowledgeable trust and private client professionals. A recent boom in foreign legal and accountancy firms establishing offices in the jurisdiction provides some evidence of this. In addition, a continuous

influx of international trust industry talent into Switzerland means that a number of established Swiss-based trust companies are able, with relative ease, to provide trust managers or administrators well-versed in both the language and local knowledge of the international high-net-worth-families they serve. Few offshore centres can make the same claim.

It is important to acknowledge that not all is rosy in the Helvetic garden and an area where Switzerland does perhaps lag behind a number of its competitors is the formal regulation of its flourishing trust industry. However, this may yet prove to be a virtue. Based on the apparent failure of existing regulation of the global financial industry in recent years, a jurisdiction freshly contemplating the architecture of its regulatory standards is more likely to create a regime that takes account of past weaknesses while remaining relevant to the evolving needs of both the client and the international community. A highly robust anti-money laundering regime aside – it is often more challenging (for all the right reasons) to open a bank account in Switzerland than in many onshore jurisdictions – Switzerland is undeniably at the developmental stage of regulating its trust industry. However, the establishment of the Swiss Association of Trust Companies in 2007 – an association dedicated to upholding the high standard of quality and professionalism inherent in the Swiss trust industry – demonstrates the industry's commitment to offering not only a first class level of service but also its willingness to voluntarily adopt codes of conduct and lay the path for any future regulation.

Conclusion

Despite increasing pressure on the offshore world Switzerland remains a prime location

for the administration and management of the affairs of the high-net-worth-family. Centrally located (both geographically and in terms of time zone) and served by a local and global transport network second to none, Switzerland is a paragon of stability and home to a highly sophisticated financial infrastructure and multi-national workforce supremely qualified in a multitude of financial disciplines (the majority of which serve to promote the interests of the family office). Whilst the oft touted principle of Swiss banking confidentiality will almost certainly be subject to some dilution (at least for those resident outside the jurisdiction), the quality and acute expertise in banking services developed in the country over centuries will not simply disappear overnight. In fact it seems likely that the medium- to long-term effect of increased transparency will be an improved understanding of the jurisdictional taxation and disclosure issues pertinent to high-net-worth families and therefore further improvement in the jurisdiction's financial and banking services. The ratification of the Hague Convention, coupled with the subsequent tax circulars, has consolidated the position of the Swiss trustee and has provided meaningful guidance in relation to the taxation of trusts administered from the jurisdiction (regardless of the governing law of those trusts). Whilst the concept may make for an altogether less compelling Hollywood blockbuster, Switzerland's numerous talents should ensure that the jurisdiction very much remains on the A-list of any high-net-worth family seeking to locate its family office. ■

1 Effective in Switzerland on 1 July 2007.

2 The Swiss Tax Conference (essentially the Heads of the 26 cantonal tax authorities) published Circular nr.30 on 22 August 2007. This was followed by a Federal Circular nr.20 published on 27 March 2008 confirming the content of Circular nr.30.