

2022 edition

STARTING A BUSINESS IN GENEVA

KEY ASPECTS OF BUSINESS CREATION IN THE CANTON OF GENEVA

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1 LEGAL FORMS

SETTING UP A COMPANY: WHICH **LEGAL STRUCTURE** IS RIGHT FOR YOU?

This chapter explains the pros and cons of various legal structures, and the necessary steps for setting up your company.

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TWO MAIN CATEGORIES OF LEGAL STRUCTURE :

1. Sole proprietorship and unincorporated partnerships:

These business structures are cheap to set up, but the owners bear unlimited personal liability for the business on all their assets (including their private assets):

- > Sole proprietorship
- > General partnership (Société en nom collectif)

2. Incorporated companies:

This type of company is more costly to set up, but the owners' liability is limited to the amount of their share of capital (except in the case of criminal liability):

- > Limited Liability Company (hereafter LLC) (Société à responsabilité limitée, Sàrl)
- > Corporation limited by shares (hereafter corporation) or limited company (Société anonyme, SA)

This guide does not discuss several other legal structures defined in Swiss law (including foundations, associations, and cooperatives) which are designed for specific purposes (for instance managing private wealth, non-profit activities, defending members' interests, etc.)

1. SOLE PROPRIETORSHIPS AND UNINCORPORATED PARTNERSHIPS

| | Sole proprietorship |
|--|---|
| Number of partners | <i>One natural person. The sole proprietorship is identified with the business owner. To operate a sole proprietorship, the owner must be a Swiss national, a foreign resident with a C permit, or an EU/EFTA national with a G or B permit.</i> |
| Legal personality | <i>Not a legal entity. It is identified with the legal personality of the owner.</i> |
| Setting-up process | <i>To formalize set-up, the owner must register with a compensation fund (for compulsory social OASI/DI/IC* social insurance payments).</i> |
| Commercial Register (CR) (Registre du commerce) | <i>Entry in the CR is compulsory only if annual turn-over exceeds CHF 100,000 (ORC art. 36).</i> |
| Business name | <i>The owner's last name (with or without first name) must appear prominently in the business name (CO, art. 945, para. 1). Other terms may be added within the limits defined by the general legal guidelines on business names.</i> |
| Nominal capital | <i>None.</i> |
| Capital contributions | <i>None.</i> |
| Articles of association | <i>Not compulsory.</i> |
| Decision-making | <i>By the business owner.</i> |
| Management and representation | <i>By the business owner. He/she may give powers of representation and signature to third parties.</i> |
| Liability | <i>Unlimited personal liability of the business owner (including on private assets) for the incurred liabilities.</i> |
| Partners' rights and obligations | <i>No partners.</i> |
| Accounting | <i>Compulsory, but for sole proprietorships with sales under CHF 500,000 annually, simple accounting is sufficient (statement of income, expenditures and assets). If turn-over exceeds CHF 500,000, the business must follow standard accounting rules (double entry bookkeeping according to recognized accounting principles).</i> |
| Taxation (see relevant chapter) | <i>No double taxation. The business owner is considered self-employed; business profit is taxed as personal income.</i> |
| Dissolution | <i>Bankruptcy or voluntary termination.</i> |
| Note | <i>It is the simplest legal structure available.</i> |
| OASI/DI/IC * (AVS/AI/APG) | <i>Business owner = self-employed with regard to the compulsory social insurance system.</i> |
| Note | <i>Sole proprietorship is equivalent to self-employed status.</i> |

*Old-Age and Survivors' Insurance/Disability Insurance/Income Compensation (AVS/AI/APG)

| | |
|--|---|
| | General Partnership |
| Number of partners | <i>Minimum 2 natural persons (CO, art. 552).</i> |
| Legal personality | <i>None. The partnership may, however, acquire rights, enter into commitments, take legal action and be sued; it has quasi-legal personality.</i> |
| Setting-up process | <i>The partners sign a contract defining the name and purpose of the business and the legal relationship between them (namely their respective contributions). The business is then entered in the commercial register. The partners are required to register with OASI.</i> |
| Commercial Register (CR) (Registre du commerce) | <i>Registration is compulsory: > Commercial partnership: declaratory registration (CO, art. 552 para. 2), > Non-commercial partnership: constitutive registration (CO, art. 553). Request signed by all the partners. The signatures of managing partners are registered.</i> |
| Business name | <i>Free.</i> |
| Nominal capital | <i>No legal limit.</i> |
| Capital contributions | <i>No capital contribution, but partners must make a contribution in some form. Profits and losses are then apportioned as defined in the partnership agreement. The agreement may stipulate the payment of interest in relation to each partner's assets.</i> |
| Articles of association | <i>Not compulsory.</i> |
| Decision-making | <i>Unless otherwise specified, general partnerships follow the rules defined for simple partnerships.</i> |
| Voting method | <i>As specified in the partnership agreement.</i> |
| Management | <i>Unless the commercial register contains an entry to the contrary, all partners are authorized to carry out in the partnership's name all transactions that serve the purpose of the partnership.</i> |
| Representation | <i>Unless the commercial register contains an entry to the contrary, all partners are authorized to represent the partnership.</i> |
| Liability | <i>Partnership's liability: for any commitment made by a managing partner, as well as any tort committed by a partner in the exercise of his/her partnership function. Partners' liability towards third parties: partners are jointly and individually liable for all obligations of the partnership; partnership assets are first in line (secondary liability). A person joining a general partnership is jointly and individually liable on his/her entire assets for the partnership's existing joint obligations. Creditors' claims against a partner become time-barred after five years after the dissolution of the partnership. Liability of a partner towards the other partners: as specified in the partnership agreement.</i> |
| Partners' rights and obligations | <i>> Right of control; approval of annual accounts; distribution of profits. > Partners may not engage in activities that compete with the partnership. > Right to receive a share of the profits and fees of the previous accounting period or to proceeds of liquidation.</i> |

| | General Partnership (cont.) |
|------------------------------------|--|
| Accounting | Compulsory, but for partnerships with annual sales under CHF 500,000, simple accounting is sufficient (statement of income, expenditures and assets). If revenue exceeds CHF 500,000, the business must follow standard accounting rules (double entry bookkeeping according to recognized accounting principles). Each partner is advised to keep detailed accounting records, since their position vis-à-vis the partnership may evolve over time. |
| Taxation (see relevant chapter) | Partners are taxed individually. |
| Dissolution | By the commencement of insolvency proceedings. The partnership may also be liquidated by agreement among all the partners, or by a majority of partners, if so specified in the partnership agreement. Provisions governing simple partnerships are also applicable to general partnerships (CO, art. 545). |
| Note | If a partner decides to resign from a partnership with only two partners, or if one of the partners wishes to continue the partnership's affairs (registration with the CR), the general partnership is not dissolved, but the remaining partner cannot continue to conduct business with the same legal structure. |
| OASI/DI/IC* (AVS/AI/APG) | Partners = self-employed. |

*Old-Age and Survivors' Insurance/Disability Insurance/Income Compensation (AVS/AI/APG)

2. INCORPORATED COMPANIES

| | Limited Liability Company (LLC) Société à responsabilité limitée (Sàrl) |
|--|--|
| Founders | An incorporated company can be created by one or several persons or companies. |
| Legal personality | Full legal personality |
| Setting-up process | Capital contribution deposited in a capital payment account at a bank (the value of contributions in kind must be evaluated by an expert). Sign public deed and articles of association before a notary. The notary then enters the company in the commercial register. |
| Commercial Register (CR) (Registre du commerce) | Entry in CR is compulsory and constitutes the company as a legal entity (CO, art. 779, para. 1). Request signed by two managers or a member authorized to represent the company with his/her individual signature. The articles of association and certificate of incorporation are sent by the notary (along with proof that capital contributions have been deposited and are validly subscribed for). |
| Nominal capital | Minimum CHF 20,000 (CO, art. 773); in cash or in kind; no upper limit. |

| | Limited Liability Company (LLC) (cont.) |
|----------------------------------|--|
| Capital contributions | Minimum CHF 100 to start; at least one share per partner; fully paid up at foundation time (see note below). |
| Articles of association | <p>Compulsory. Must contain provisions regarding the company's:</p> <ul style="list-style-type: none"> > Business name > Headquarters > Purpose > Amount of nominal capital and value of capital contributions, and > Form of its external communications. <p>By law, the articles of association must include special provisions concerning the rights and obligations of partners. For instance, right of veto, prohibition of competition clauses, and obligation to make additional financial contributions (CO, art. 776 a).</p> |
| Role of the General Meeting (GM) | <p>The company's highest governing body is its general meeting of members (GM). The GM's inalienable powers include:</p> <ul style="list-style-type: none"> > The right to amend the articles of association > The right to appoint and remove managing directors, set their fees and discharge them > The right to approve the annual accounts and determine how profits from the balance sheet are used. |
| Decision-making | <p>In principle: the voting rights of members are determined by the value of their capital contribution, with a few exceptions (e.g. appointment of members of the auditor and resolutions on raising a liability action).</p> <p>The articles of association may specify that voting rights are not dependent on nominal value, and that each capital contribution carries one vote. In that case, the ratio between lowest and highest capital contribution cannot exceed 1: 10.</p> |
| Management and representation | <p>Jointly by company members; the articles of association may also give powers of management and representation to:</p> <ul style="list-style-type: none"> > one or more company members; > third parties. <p>At least one person authorized to represent the company (managing director or manager) must be resident in Switzerland. When company members hold joint power of representation, a sufficient number of members authorized to sign on the company's behalf must be resident in Switzerland.</p> <p>Only physical persons may be appointed as managing directors.</p> <p>If a commercial enterprise is a member of the company, it may appoint, as needed, a natural person as managing director.</p> <p>If the company has more than one managing director, the general meeting of members appoints one director to act as chairman.</p> <p>The GM can, at any time, remove a managing director.</p> <p>If the company has more than one managing director, management decisions are taken by a majority of votes cast. The chairman has the casting vote, unless otherwise provided for by the articles of association.</p> |
| Liability | <p>The provisions of the law on corporations (companies limited by shares) apply by analogy to the liability of founders, managing directors, auditors and liquidators of LLCs. The company is sole responsible for its liabilities, which are payable from company assets only.</p> |

| | Limited Liability Company (LLC) (cont.) |
|---|--|
| Rights and obligations of members | <p>The voting right of members are determined by the value of their nominal share, with each member holding at least one vote.</p> <p>Members have the right to request information from the managing director regarding the affairs of the company. If an auditor has been appointed, members can request to consult the company books and files only if they have a legitimate interest in doing so.</p> <p>They have a right to a share of the profits proportional to the nominal value of their share. A right of resignation may be specified in the articles of association.</p> |
| Accounting | <p>Compulsory. Accounting records must be kept with the care and detail requires by the nature and scope of the business. They should clearly reflect the company's financial situation, the state of its liabilities and receivables, and annual profit and loss.</p> |
| Auditor | <p>The company is in principle required to appoint an auditor to perform an audit, which can be either ordinary or limited, according to the law on LLCs (CO, art. 727 and ff., with reference to art. 818 para. 1).</p> <p>LLCs may also "opt out" of appointing an auditor if they meet all three of the following conditions (CO, art. 818 para. 1 and art. 727a para. 2):</p> <ul style="list-style-type: none"> > All the company members give their consent; > The company is required only to perform a limited audit; > The company does not have more than ten full-time employees on annual average. |
| Taxation (see relevant chapter) | <p>Federal tax on net profit.</p> <p>Cantonal tax on net profit and capital.</p> <p>Municipal business tax (if applicable, depends on the municipality where the company is domiciled).</p> |
| Dissolution | <p>By decision of the members' general meeting, with at least 2/3 of votes represented, and an absolute majority of the nominal capital with a right to vote (the articles of association may specify a larger majority, see CO, art. 808 b).</p> <p>If bankruptcy proceedings are started, or in other cases provided for by the law (CO, art. 821) or the articles of association.</p> |
| Notes | <p>Negotiating capital contributions can be difficult, as it is compulsory to request and enter into the CR all documents relating to the transferring of contributions. Furthermore, the law does not guarantee the right of members to freely resign from the company without just cause; the articles of association may however define such a right as well as the conditions under which it may be exercised (CO, art. 822).</p> <p>When the company does not have a required corporate body, or if the composition of one of these corporate bodies does not comply with the law, any shareholder, creditor or the commercial registrar may request the court to take the requested corrective measures (CO, art. 731b).</p> |
| OASI/DI/IC* (AVS/AI/APG) | <p>Company members do not contribute to social insurance, unless they are also employed by the company (in which case they contribute as employees). However, shares of profits, fixed fees and attendance fees disbursed to members of management and governing bodies are subject to social insurance contributions.</p> |

*Old-Age and Survivors' Insurance/Disability Insurance/Income Compensation (AVS/AI/APG)

| | |
|--|--|
| | Corporation (Société anonyme, SA) |
| Founders | <i>A Limited Liability Company can be established by one or more entities (natural persons or legal entities) or commercial entities (single founder is possible).</i> |
| Legal personality | <i>Full legal personality. Liabilities are payable only from the company's assets.</i> |
| Setting-up process | <i>Capital contribution deposited in a capital payment account at a bank (the value of contributions in kind must be evaluated by an expert). Sign public deed and articles of association before a notary. The notary then enters the company in the commercial register.</i> |
| Commercial Register (CR) (Registre du commerce) | <i>Entry in CR is compulsory and constitutes the company as a legal entity.</i> |
| Nominal capital | <i>At least CHF 100,000, of which 20 % (but at least CHF 50,000) must be paid up at time of foundation (CO, art. 621 and 632). No upper limit.</i> |
| Capital contributions | <i>Registered or bearer shares with a minimum nominal value of CHF 0,01. The company may also issue participation and/or dividend rights certificates (neither of which carry voting rights).</i> |
| Articles of association | <i>Compulsory. Must contain provisions regarding the company's:</i> <ul style="list-style-type: none"> > Purpose > Name > Headquarters > Total share capital and the amount of paid up capital > Number, nominal value and types of shares > Procedure for convening general meetings > Voting rights of shareholders > Governing bodies for management and auditing, and > Form of its external communications. |
| Role of the General Meeting (GM) | <i>The GM has the following inalienable powers:</i> <ul style="list-style-type: none"> > Elect and discharge members of the board of directors > Determine and amend the articles of association > Appoint external auditors > Approve annual accounts > Set dividends > Make any other decision concerning matters reserved to it by law or the articles of association. |
| Decision-making | <i>General Meeting by absolute majority of voting rights represented (unless otherwise provided for by the law or the articles of association). Shareholders exercise their voting rights in proportion to the nominal value of shares belonging to them and have at least one vote. Preferential shares: voting rights are proportional to the number of shares held (one vote per share), as stipulated by the articles of association, subject to certain conditions (see CO, art. 693 para. 3).</i> |

| | Corporation (Société anonyme, SA) (cont.) |
|---|---|
| Management | <p><i>Delegated either to the Board of Directors or to several members of the board (managing directors) or third parties (executive officers).</i></p> <p><i>The board is the company's highest governing body; it issues all necessary instructions regarding the organization and management of the company, appointment and dismissal of persons entrusted with executing its decisions, preparation of annual reports, and implementation of decisions.</i></p> |
| Representation | <p><i>Any member of the board, unless otherwise specified in the articles of association or company rules. Representation may be delegated to one or several members of the board (managing directors) or third parties (executive officers).</i></p> <p><i>At least one member of the board must be authorized to represent the company. The type of signature is entered in the commercial register (individual, joint signature of two or more, etc.).</i></p> <p><i>The company must be able to be represented by one person who is resident in Switzerland. This requirement may be fulfilled by a member of the board or an executive officer. When the company is represented jointly, a sufficient number of signatures with the power to represent the company must belong to persons resident in Switzerland.</i></p> |
| Liability | <p><i>Toward third parties (CO, art. 752 and ff.): the company is liable on its assets only for obligations and torts committed by its governing bodies.</i></p> <p><i>Personal liability:</i></p> <ul style="list-style-type: none"> <i>> of founders for fault or negligence at time of the company's foundation, for instance if they provided incorrect information in the issue prospectus;</i> <i>> of members of the board for fault or negligence in managing or liquidating the company;</i> <i>> of auditors for failing to fulfil their duties.</i> <p><i>Towards the company (CO, art. 756): the damaged shareholder may sue the company for damages.</i></p> |
| Rights and obligations of shareholders | <p><i>Right in proportion to profits and proceeds of liquidation.</i></p> <p><i>Voting right.</i></p> <p><i>Right of control over management and auditing.</i></p> <p><i>Right to request a special audit.</i></p> <p><i>Preferential subscription right.</i></p> |
| Accounting | <p><i>Compulsory. Accounting records must be kept with the care and detail required by the nature and scope of the business. They should clearly reflect the company's financial situation, the state of its liabilities and receivables, and annual profit and loss.</i></p> |
| Auditor | <p><i>The company is in principle required to appoint an auditor to perform an audit, which can be either ordinary or limited, according to the law on corporations (CO, art. 727 and ff.).</i></p> <p><i>Corporations may also "opt out" of appointing an auditor if they meet all three of the following conditions (CO, art. 727a para. 2):</i></p> <ul style="list-style-type: none"> <i>> All the company members give their consent;</i> <i>> The company is required only to perform a limited audit;</i> <i>> The company does not have more than ten full-time employees on annual average.</i> |
| Taxation (see relevant chapter) | <p><i>Federal tax on net profit.</i></p> <p><i>Cantonal tax on net profit and capital.</i></p> <p><i>Municipal business tax (if applicable, depends on the municipality where the company is domiciled).</i></p> |

| | Corporation (Société Anonyme, SA) (cont.) |
|-------------------------------------|--|
| Dissolution | <p>According to the articles of association.</p> <p>By decision of the GM.</p> <p>By the commencement of insolvency proceedings.</p> <p>By judgment for cause rendered at the request of shareholders representing at least 10% of nominal capital.</p> |
| Notes | <p>Relatively burdensome accounting and governance.</p> <p>Limited liability of shareholders. Shares can be easily transferred.</p> <p>When the company does not have a required corporate body, or if the composition of one of these corporate bodies does not comply with the law, any shareholder, creditor or the commercial registrar may request the court to take the requested corrective measures (CO, art. 731b).</p> |
| OASI/DI/IC* (AVS/AI/APG) | <p>Shareholders are not required to contribute to social insurance, unless they are also employed by the company (in which case they contribute as employees). Shares of profits, fixed fees and attendance fees disbursed to members of the board and governing bodies are subject to social insurance contributions.</p> |

*Old-Age and Survivors' Insurance/Disability Insurance/Income Compensation (AVS/AI/APG)

3. SETTING UP A CORPORATION OR LLC IN THE CANTON OF GENEVA: CHECK-LIST

3.1 Obtain information and advice regarding the various legal structures.



3.2 Check the availability of the chosen name of your company > www.regix.ch

3.3 Deposit capital contribution on a capital payment account with a bank:

> CHF 100,000 for a corporation (of which 20%, but a minimum of 50,000, must be paid up),

> CHF 20,000 for a LLC

The bank confirms that the capital has been deposited (affidavit).

3.4 The founder or founders sign the public deed before a notary.

They declare that they are founding a corporation or LLC and draw up the articles of association.

For a corporation : appoint members of the board of directors and auditor (unless opting out).

For a LLC : appoint a managing member or managing director and an auditor (unless opting out).

3.5 Registration of a company in the commercial register.

The administrator(s) add their legalised signature(s) to the registration application, and send it to :

> **Registreducommerce**

Rue du Puits-Saint-Pierre 4 | Case postale 3597 | 1211 Genève 3
+41 22 546 88 60

<https://www.ge.ch/inscrire-au-registre-du-commerce-actualiser-ses-donnees>

Entry into the register confers legal personality on the company.

3.6 The board of directors may access the paid-up capital by presenting a certification of registration from the commercial register.

The board of directors implements the company's business plan.

It sets up financial auditing and accounting systems, enters into a lease, etc.

The company registers with a compensation office (for compulsory social insurance contributions):

> **Office cantonal des assurances sociales**

Rue des Gares 12 | Case postale 2696 | 1211 Genève
+41 22 327 27 27 | www.ocas.ch

> **Fédération des Entreprises Romandes Genève**

Rue de St-Jean 98 | Case postale 5278 | 1211 Genève 11
+41 58 715 31 11 | www.fer-ge.ch

NODE - Nouvelle Organisation Des Entrepreneurs, depuis 1922

Rue de Malatrex 14 | 1201 Genève
+41 22 338 27 27 | www.node1922.ch

4. PROS AND CONS

4.1 Sole proprietorship vs. corporation or LLC¹

Pros of sole proprietorship

- > Simple and cheap to set up, which can be an advantage in the early stages of a business.
- > No minimum capital required.
- > Can be converted into an incorporated company.
- > As the sole proprietor, you are free to take all decisions relating to your business.
- > No double taxation, unlike incorporated companies. Corporations and LLCs are legal entities that pay tax. For the business owner, this implies double taxation, in that the company is taxed at the corporate level on profits, and at the level of the owner on his or her earned income from the business.

Cons of sole proprietorship

- > The owner is liable on all his or her assets (both corporate and private) for the liabilities of the business.
- > Converting a sole proprietorship into a Corporation or LLC has consequences on taxation. You should seek advice from an expert to determine whether sole proprietorship is the right option for you.
- > A sole proprietor who wants to enter into partnership will have to establish a new legal structure.
- > It can be difficult to transfer a sole proprietorship.

¹Source : PMEinfo, copyright SECO /Task force PME - www.kmu.admin.ch

4.2 Corporation vs. LLC

| | Corporation | Limited Liability Company |
|---|---|--|
| Share capital or nominal capital | <i>Min. CHF 100,000 of which at least 20% or CHF 50,000 paid up.</i> | <i>Min. CHF 20,000, of which 100% paid up.</i> |
| Nominal value of shares or capital contribution | <i>Min. CHF 0.01</i> | <i>Min. CHF 100</i> |
| Public record | <p><i>The name of shareholders and the number and value of their shares do not appear in the public record.</i></p> <p><i>Specific regulations (for instance Law on Stock Exchanges) may impose obligations regarding information that must be made public.</i></p> | <i>The identity of company members and/or value of their contribution appear in the public record.</i> |
| Participation certificates | <i>Possible.</i> | <i>Not possible.</i> |
| Obligation to provide further contributions (in addition to paid up contributions) | <i>Shareholders cannot be required to provide other services.</i> | <i>The articles of association may specify an obligation to provide further contributions.</i> |
| Obligation to provide other services | <i>Shareholders cannot be required to provide other services.</i> | <i>The articles of association may specify an obligation to provide other services.</i> |
| Other obligations of members/shareholders | <i>None.</i> | <p><i>The articles of association may include a non-compete clause.</i></p> <p><i>Members and managing directors have a duty of loyalty.</i></p> |
| Decisions of the General Meeting | <i>No right of veto.</i> | <i>The articles of association may specify a right of veto.</i> |
| Sale of shares/Capital contribution of the General Meeting | <i>As a general rule, shares may be sold by simple transfer or endorsement. Some restrictions on transfers may apply under certain conditions.</i> | <i>Unlimited possibility to restrict or prohibit the transfer of shares, or conversely not to restrict their transfer.</i> |

| | Corporation | Limited Liability Company |
|---|---|---|
| Resignation/exclusion of a shareholder/member | <p><i>Impossible in principle.</i></p> <p><i>Possible if the amount subscribed is not paid up at time of purchase of shares, or at time of public offering in the case of a publicly listed company.</i></p> | <p><i>Resignation and exclusion possible.</i></p> <p><i>Legal right to resign for just cause; other reasons may be specified by the articles of association; right to follow-up resignation (indemnification of the resigning member).</i></p> <p><i>Exclusion for just cause, or for other reasons defined by the articles of association.</i></p> |
| Implementation | <p><i>Unlimited number of shareholders.</i></p> <p><i>Shareholders can be silent (financial partners).</i></p> <p><i>Shares can be transferred easily.</i></p> | <p><i>The operation of the company has a strong personal dimension.</i></p> <p><i>In principle, partners participate in management.</i></p> <p><i>Best for a small number of partners.</i></p> <p><i>Possible to limit options to sell/transfer shares.</i></p> |
| Converting a corporation into a LLC or vice-versa | <p><i>Conversion is possible under the provisions of the Swiss Law on Merger, Demerger, Conversion and Transfer of Assets and Liabilities.</i></p> <p><i>Subject to certain material and formal conditions.</i></p> <p><i>Not possible in cases of insolvency or capital loss.</i></p> <p><i>Simplified procedure for SMEs.</i></p> | |

5. BRANCH OFFICE

Legal status

In Swiss law, a branch office is a commercial enterprise existing in a relation of dependence towards a parent company that legally owns it. It engages in business activities similar to those of the parent company (which can be based in Switzerland or abroad), in a continuous manner, in a separate location, and somewhat independently from its parent.

The branch office must fulfil the following criteria:

- > It has its own facilities
- > It has a representative who is resident in Switzerland (C or B permit)
- > Its business purpose is similar to the parent company's and it transacts real business (it has revenues and expenditures), and
- > It keeps accounting records.

Registration in the commercial register

The registration of the branch office in the register has declarative value. The branch office must provide the following information to the register :

- > The name and headquarters of the parent company
- > The legal structure and identification number of the parent company at the CR
- > For the branch of a foreign parent company, indicate (if appropriate) its nominal capital (value and currency), as well as the paid-up amount of contributions
- > The name (see CO, art. 952) and address of the branch office
- > The purpose of the branch (for branches of Swiss companies, only if narrower than the parent company's)
- > The persons representing the branch and the extent of their representation
- > The location (physical) and, if applicable, a declaration of the domiciliary.

The request must be signed by a person who is able to represent the parent company or branch office.

The following documents must be provided at time of registration :

- > A legalized extract of the minutes of the relevant corporate body, documenting the decision to create the branch office, the names of the representatives and the type of representation,

And, for the branch of foreign companies :

- > An extract from the commercial register of the place where the parent company has its headquarters (original document dated less than six months), and
- > The articles of association legalized by the commercial registrar of the place where the parent company has its headquarters.

All the documents delivered by a foreign entity (for instance, commercial register or notary) must bear the Apostille certificate or another certificate delivered by a Swiss representation (Swiss consulate or embassy).

Registration in the commercial register establishes legal jurisdiction in the place where the branch office is located, in addition to that of the parent company.

Taxation

The branch office is submitted to a similar taxation as to a corporation or LLC in Switzerland.

Removal from the register

The branch may be delisted from the register at the request of representatives of the parent company with the authority to take such steps with regard to the branch office. It is removed automatically if the parent company ceases to exist or is shown to be inactive.

6. LEGAL COSTS OF SETTING UP A BUSINESS IN GENEVA

The amounts below are for informational purposes only, as actual fees can vary.

| | Registration of business name in CR, legal publications and expenses | Federal Stamp Duty | Notary's fee for Certificate of incorporation | Notary's fee as a percentage of capital |
|---|--|---|---|--|
| Sole proprietorship | <i>Min. CHF 190* (CHF 130 if registered online**)</i> | | | |
| General Partnership Limited Partnership | <i>Min. CHF 370* (CHF 290 if registered online**)</i> | | | |
| Limited Liability Company (capital CHF 20,000) | <i>From CHF 650</i> | <i>No stamp duty on capital up to CHF 1,000,000</i> | <i>CHF 500-2,000</i> | <i>Up to CHF 50,000: 7‰ CHF 50,001-100,000: 6‰ CHF 100,001-200,000: 5‰ CHF 200,001-300,000: 4‰</i> |
| Corporation (capital CHF 100,000) | <i>From CHF 650</i> | <i>No stamp duty up to CHF 1,000,000</i> | <i>CHF 500-2,000</i> | <i>Up to CHF 50,000: 7‰ CHF 50,001-100,000: 6‰ CHF 100,001-200,000: 5‰ CHF 200,001-300,000: 4‰</i> |

Other costs for corporations and LLC

When setting up a corporation or a LLC, costs include the legal fees detailed above, as well as notary's fees and expenses related to setting up a capital payment account with a bank. These costs are generally in the vicinity of:

- > CHF 2,500 - 4,000 for a LLC
- > CHF 4,000 - 6,000 for a corporation

Actual costs depend on value of the capital and the number of directors registered. Replacing paid up capital by contributions in kind entails extra costs (since the value of the contributions in kind must be evaluated by an expert, usually a CPA).

* Minimum configuration (one partner with signature); includes fees for setting up the requisition and legalising the signature.

** If registered online, the requisition setup fee is waived.

USEFUL ADDRESSES



Geneva Economic Development Office - Direction générale du développement économique, de la recherche, et de l'innovation (DG DERI)

Rue de l'Hôtel-de-Ville 11 | 1211 Genève 3
+41 22 388 34 34 | innovation.ge.ch



**Promotion Department
Fédération des Entreprises Romandes Genève (FER Genève)**

Rue de Saint-Jean 98 | Case postale 5278 | 1211 Genève 11
+41 58 715 31 11 | www.fer-ge.ch



Cantonal Social Insurance Office - Office cantonal des assurances sociales (OCAS)

Rue des Gares 12 | Case postale 2696 | 1211 Genève 2
+41 22 327 27 27 | www.ocas.ch



NODE - Nouvelle Organisation Des Entrepreneurs, depuis 1922

Rue de Malatrex 14 | 1201 Genève
+41 22 338 27 27 | www.node1922.ch



Notaries - Chambre des notaires de Genève

Rue Farel 10 | 1204 Genève
+41 22 310 72 70 | www.notaires-geneve.ch



Commercial Register (CR) - Registre du commerce

Rue du Puits-Saint-Pierre 4 | Case postale 3597 | 1211 Genève 3
+41 22 546 88 60 | www.ge.ch/consulter-registre-du-commerce



APRES-GE – Chambre de l'économie sociale et solidaire

Rue des Savoises 15 | 1205 Genève
+41 22 807 27 97 | www.apres-ge.ch

2 FOREIGN STAFF

**ARE YOU PLANNING
TO HIRE A FOREIGN
NATIONAL IN
GENEVA ?
ARE YOU A FOREIGN
NATIONAL SETTING
UP A BUSINESS IN
GENEVA ?**

This chapter discusses the rules and procedures for hiring non-Swiss staff and obtaining a work permit in the Canton of Geneva.

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HIRING FOREIGN STAFF AND ARRANGING WORK PERMIT

In order to be gainfully employed in Switzerland, foreign nationals must hold a valid work permit. Please note that foreign nationals who set up a business in Switzerland must also apply for a work permit.

The bilateral agreements between Switzerland and the European Union (EU), especially the Agreement on the Free Movement of Persons (AFMP), have considerably simplified procedures for EU nationals. The same rules on the free movement of persons also apply to nationals of the European Free Trade Agreement (EFTA).

This chapter is divided into two parts: the first explains work permit procedures for EU/EFTA nationals, and the second explains work permit procedures for nationals of countries outside the EU/EFTA, called Third States.

Countries part of the European Union (EU-27) and the European Free Trade Association (EFTA):

EU-27 and EFTA countries: Austria, Belgium, Bulgaria, Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Iceland, Latvia, Liechtenstein, Lithuania, Luxembourg, Poland, Malta, Norway, Netherlands, Portugal, Romania, Slovakia, Spain, Czech Republic, Slovenia, Sweden.

Nationals from the above countries enjoy complete freedom of movement.

Third States: all countries not included in the above lists.

1. WORK AND RESIDENCE PERMITS FOR EU/EFTA NATIONALS

1.1 B Permit for long-term work and residence

| Status | Procedure | Validity |
|---|--|--|
| B PERMIT Long-term work permit | Send the required form and documents to the Service étrangers of the Cantonal Population and Migrations Office (OCPM) immediately upon hiring. | Renewable until the B permit holder obtains permanent residence (C permit) after 10 years. |

1.2 L Permit for short term work and residence – short validity

| Status | Procedure | Validity |
|--|--|---|
| L PERMIT Short-term work permit | Send the required form and documents to the Service étrangers of the Cantonal Population and Migrations Office (OCPM) immediately upon hiring. | The permit is valid 364 days. Renewable. |

1.3 Other work and residence permits

| Status | Procedure | Validity |
|---|---|---|
| G PERMIT Cross-border “commuter” permit | Use the online registration through “e-démarches” The company may hire a cross-border worker only upon presentation of a valid work contract. | The permit is valid for 5 years for permanent contracts, as well as fixed-term contracts of more than 12 months duration. Renewable. |
| Ci PERMIT | Work permit for spouses of international civil servants living in the same household, as well as their children under 21 years of age joining them for reasons of family reunification. Applications for Ci booklets are examined by the Cantonal Population and Migrations Office (OCPM). | Depends on the length of the posting of the holder of a legitimization card issued by the Swiss Department of Foreign Affairs (DFA). |
| C PERMIT Permanent residence | Applications for C permits are examined by the Cantonal Population and Migrations Office (OCPM). | Indefinite. |

2. WORK AND RESIDENCE PERMITS FOR THIRD STATE NATIONALS

2.1 B Permit for long-term work and residence

| Status | Eligibility | Validity |
|---|---|--|
| B Permit Quota-based long-term work permit May be subject to special conditions (for instance, limited time period only for duration of employment contract) or extension linked to objectives. | <i>Economic interest.</i> <i>Qualifications of the applicant.</i> <i>Priority given to Swiss residents and candidates from the EU (employment start).</i> <i>Working conditions are respected.</i> <i>Quota availability.</i> | <i>Renewable until the B permit holder obtains permanent residence (C permit) after 10 years</i> |

2.2 L Permit for short-term work and residence

| Status | Eligibility | Validity |
|--|--|--|
| L PERMIT Conditional short-term work permit (quota-based) | <i>Economic interest.</i> <i>Qualifications of the applicant.</i> <i>Priority given to Swiss residents and candidates from the EU (employment start).</i> <i>Working conditions are respected.</i> <i>Quota availability.</i> | <i>Renewable up to a maximum of 24 months.</i> |
| Entry authorization (Includes residence authorization. Sent to the employer) | <i>Foreign nationals on temporary assignment (for instance, installation of IT systems, company audit, evaluation, etc.), short-term transfers of specialists, trainees.</i> <i>Temporary assignment, installation of IT systems, company audit, extra manpower during peak periods.</i> <i>Management and development of a company for which the manager does not need to be present in Switzerland yearlong.</i> | <i>Up to 4 consecutive months.</i> <i>120 days over 12 months</i> |

2.3 Other work and residence permits

| Status | Eligibility | Validity |
|--|---|--|
| G PERMIT Cross-border “commuter” work permit | <i>For third state nationals, conditional on review.</i> <i>Priority to local applicants. Economic interest.</i> <i>Working conditions are respected.</i> <i>Change of place, profession and/or canton.</i> | <i>1 year renewable.</i> |
| N PERMIT Asylum-seeker | <i>Permission to work on a temporary basis while the application for asylum is being examined.</i> | <i>Until asylum is granted or refused.</i> |
| F PERMIT Temporary entry | <i>Work permit for certain categories of foreign nationals who do not meet the necessary conditions to apply for asylum.</i> | <i>Renewable.</i> |
| Ci PERMIT | <i>Work permit for spouses of international civil servants living in the same household, as well as their children under 21 years of age joining them for reasons of family reunification.</i> <i>Applications for Ci booklets are examined by the Cantonal Population and Migrations Office (OCPM).</i> | <i>Depends on the length of the posting of the holder of a legitimation card issued by the Swiss Department of Foreign Affairs (DFA).</i> |
| C PERMIT Residence permit | <i>Applications for C permits are examined by the Cantonal Population and Migrations Office (OCPM).</i> | |

3. WORKERS AND COMPANIES FROM EU/EFTA COUNTRIES

3.1 Agreement on the Free Movement of Persons

The Agreement on the Free Movement of Persons (AFMP) of 21 June 1999 between Switzerland and the EU facilitates conditions for nationals of EU member states to live and work in Switzerland. To complement the AFMP are various provisions regarding the mutual recognition of diplomas, the right to purchase real estate, and measures to coordinate social security systems. The same rules apply to nationals of the European Free Trade Agreement (EFTA).

As a result of the United Kingdom’s withdrawal from the EU (Brexit), the AFMP does no longer apply to relations between Switzerland and the United Kingdom since 1 January 2021.

The AFMP opens up the European labour market to Swiss nationals, and vice-versa. The agreement is based on the principle of equality of treatment for nationals of signatory states. Equality of treatment means that both Swiss and European national are treated like citizens of the host country, with:

- > The same working conditions, social benefits and tax advantages
- > The opportunity to engage in self-employment
- > The right to family reunification
- > The right to remain in the country after losing one's employment
- > The right to purchase property.

Since 1 May 2011, EU-27 nationals have thus enjoyed the same rights as Swiss citizens on the Swiss labour market. A European national who signs a work contract in Switzerland is automatically granted a residence permit. In other words, Europeans have the same right to employment as Swiss citizens.

Conversely, Swiss nationals have had free access to the European labour market in all 27 EU and EFTA member states.

From 1 June 2004, Switzerland introduced a series of accompanying measures to guard against the risk of wage dumping. These measures aim to ensure fair working conditions for all workers and avoid wage and social dumping by monitoring working conditions of employees posted to Switzerland by European companies. If wage dumping is discovered, these measures make it easier to extend collective labour agreements, or, if the industry in question is not covered by a collective agreement, allows government authorities to set basic working conditions. To apply these accompanying measures, the Canton of Geneva has a comprehensive system supervised by social partners and the Canton (Office Cantonal de l'Inspection et des Relations du Travail - OCIRT - <https://www.ge.ch/organisation/ocirt-service-inspection-du-travail-it>).

3.2 Cross-border workers – Applying for a G Permit

EU-27/EFTA nationals employed in Switzerland for less than three months per year can register online. However, a work permit must be obtained as soon as the gainful employment in Switzerland exceeds 3 months.

Necessary documents:

To hire a cross-border worker, the employer must use the online registration form through “e-démarches”.

Proof of hire:

Employers may hire a cross-border employee simply by presenting a proof of hire. Cross-border workers are no longer required to have resided for six months in the border zone in order to qualify for a cross-border permit.

Validity:

The validity of cross-border permits has been extended from 1 to 5 years for permanent and fixed-term contracts lasting over 12 months (for contracts of less than 12 months, the permit is valid only for the contracted period). We therefore recommend that employers submit a copy of the work contract along with the permit application.

Social Insurance:

Any employee working in Switzerland must in principle contribute to the compulsory social insurance system, including OASI (Old-Age and Survivors' Insurance - AVS), DI (Disability Insurance - AI), IC (Income Compensation - APG), family allowances, unemployment insurance, maternity insurance, and occupational retirement pension. Cross-border workers must also be insured in Switzerland for work-related accident and injury.

Taxation:

Taxation of cross-border workers is regulated by the Tax Treaty of 9 September 1966 between France and Switzerland. Cross-border workers employed in the Canton of Geneva are subject to a direct payroll tax.

3.3 Workers residing in Switzerland – applying for B or L Permits

EU-27/EFTA nationals taking up employment in Switzerland for less than three months per year can use an on-line registration procedure. However, a work permit must be obtained as soon as the gainful employment in Switzerland exceeds 3 months.

Necessary documents:

To hire an EU/EFTA national, the employer must provide the Service étrangers of the the Cantonal Population and Migrations Office with the following documents as soon as employment commences:

- > The first and second pages of the form (see appendix), duly completed and signed by the future employee and the employer, in lieu of proof of hire, along with all the required documents listed on page 2 of the form.

Validity:

The validity of the permit depends on the work contract. For permanent or fixed-term contracts over 12 months the permit is valid for 5 years (for contracts of less than 12 months, the permit is valid only for the contracted period). We therefore recommend that employers submit a copy of the work contract along with the permit application.

Employers may hire an EU national simply by presenting a proof of hire. Prior review of wages and working conditions has been replaced by measures that aim to protect all workers and guard against social and wage dumping.

3.4 Employees of foreign companies posted to Switzerland

Subcontracting or direct contracting to a foreign company entails that company posts employees to Switzerland. Two possible situations are distinguished:

- > The posting lasts less than 90 days
- > The posting last more than 90 days

3.4.1 Posting of 90 days or less (registration procedure)

The provision of services in Switzerland does not exceed a total of 90 working days or three months per calendar year. Registration is mandatory if the period of gainful employment in Switzerland exceeds eight days per calendar year, whether the days are consecutive or not.

Self-employed service providers (EU/EFTA nationals) based in an EU/EFTA member state and posted workers from a company based in an EU/EFTA member state must register from the first day of employment in Switzerland if they are employed in the following industries:

- > Construction, public works and building supply
- > Hotels and restaurants
- > Industrial or domestic cleaning
- > Safety and security services
- > Itinerant traders
- > Sex workers

EU/EFTA-based companies posting third state nationals to Switzerland are required to register their employees. The posted employees must have been permanently integrated into the regular labour market of an EU or EFTA member state beforehand. The latter condition is generally considered to be met if the worker has been resident in that country and employed by the company for at least 12 months. In all other cases, the company must apply for a residence permit to the Service étrangers, according to the provisions of the Foreign Nationals Act and the Ordinance on Admission, Residence and Gainful Employment.

Online registration :

Employers posting workers to Switzerland, and service providers operating in Switzerland must register online (for more information on the procedure, see (https://www.sem.admin.ch/sem/en/home/themen/fza_schweiz-eu-efta/meldeverfahren.html)).

Exceptions :

Please note that the registration procedure is not available for employment agencies and rental services, as well as financial services that require authorization to operate in Switzerland and fall under government supervision (banking services, for example). Temporary access for certain regulated professions, such as health care workers, also requires prior authorization. For these professions, authorization must always be requested before the beginning of the gainful employment.

3.4.2 Posting of more than 90 days

Services provided by companies or self-employed persons from EU/EFTA states who are domiciled in the EU/EFTA and gainfully employed in Switzerland for more than 90 working days or three consecutive months per calendar year fall under the provisions of the Foreign Nationals Act and the Ordinance on Admission, Residence and Gainful Employment.

Applying for a work permit :

Apply to the Service étrangers using the official TD form, accompanied by a cover letter and all necessary documents (mentioned on the back of the TD form).

Necessary documents :

- > Individual application form TD, which can be downloaded from the website of the OCPM
- > A cover letter detailing the length of the posting and place where the service will be provided
- > A service contract
- > Detailed information on the business and its employees, using the two forms provided by the OCIRT's foreign workers section

Review by the foreign workers section:

The application is examined by the Foreign Workers Section of the Office Cantonal de l'Inspection et des Relations du Travail (OCIRT), to determine whether it meets the conditions defined by the Foreign Nationals Act and Ordinance on Admission, Residence and Gainful Employment (economic interests of Switzerland, professional qualifications, availability of quota).

Issuance of a work permit:

If the OCIRT reviews the application favourably, the OCPM issues a work permit and the employee can start working in Switzerland.

4. THIRD STATE NATIONALS

Applications for work permits for third state nationals fall under of the Foreign Nationals Act and the Ordinance on Admission, Residence and Gainful Employment and can only be granted if it is in the interests of Switzerland and the Swiss economy as a whole. In each case, the prevailing employment market situation, long-term economic growth and the ability of the foreign national to integrate are taken into account.

Any employer based in Switzerland who wishes to hire a worker from a country outside the EU/EFTA to work in Geneva must follow the following procedure, whether the prospective employee is already resident in Switzerland or not :

Priority given to local workers

The employer must first attempt to find a suitable candidate in Switzerland or the EU, by advertising the position (newspapers, employment agencies, etc.).

The employer must also list the position with the Cantonal Employment Office (OCE) at least 21 days before submitting an application to hire a foreign worker to the Service étrangers. The job description form can be completed online:

www.job-room.ch/home/job-seeker.

The employer may apply for a work permit for a third state national only if it demonstrates that no suitable candidate for the position could be found in Switzerland or the EU. The application must include:

- > Application form M, available from the OCPM (same form as used for B and L permit application), which can be downloaded from www.ge.ch/document/ocpm-formulaire-m-demande-autorisation-sejour-etou-travail,
- > A cover letter describing the employer's situation, objectives, and reasons for hiring a third state national, as well as the steps already taken to fill the position from the Swiss and EU job market
- > A work contract signed at least by the employer
- > The candidate's CV and copies of diplomas
- > A copy of a valid identity document and one passport-sized photo
- > A description of the company's staff at the time of the application, including total number of staff, nationalities, types of permits held (e.g. 2 Swiss, 1 C permit, 2 B permits, 1 G permit, 1 L permit, 2 N permits, 1 F permit), and number of apprentices, if applicable.

Submit the application:

Applications should be submitted to the Service étrangers of the OCPM by the employer, preferably by mail. The Service étrangers opens a personal file for each foreign national and carries out a preliminary review.

Review of the application by the foreign workers section of the OCIRT:

The Service étrangers of the OCPM then transfers the file to the OCIRT to review the application in terms of the labour market situation (does it meet the necessary criteria regarding priority, working conditions and wages, qualifications of the foreign national, economic interest of Switzerland).

Decision:

In some cases, the application may also be forwarded to the Canton of Geneva's Tripartite Labour Market Commission. For routine cases, review by the Commission takes 2 to 3 weeks. Decisions relating to employment periods of less than 4 months are taken directly by the OCIRT in 1 to 10 days. The OCIRT notifies the employer in writing of the positive or negative outcome of its preliminary review. If the preliminary review is positive, the application is forwarded to the State Secretariat for Migration (SEM) for approval. The procedure takes 8 weeks in total to complete.

Right to appeal:

Employers may appeal against a decision not to grant a permit within 30 days of receiving written notification of the decision. The appeals procedure is explained in the letter of notification sent to the employer.

However, in most cases it is recommended to contact the OCIRT first and consider requesting a reconsideration in accordance with article 48 of the administrative procedure law (LPA).

Issuance of the permit:

The OCIRT sends the foreign worker's file back to the Service étrangers of the OCPM to issue the requested permit. The time needed to complete this final step depends whether the Service étrangers requests further information or documents from the employer.

Special cases – cross-border permits:

In a few exceptional cases, a third state national may apply for a cross-border permit (G permit) if they have a permanent residence permit in a neighboring country. They also need to have had their residence in the neighboring country's border zone for at least six months and fulfill the labor market requirements. In that case, the Service étrangers of the OCPM transfers the file to the OCIRT to review the application in terms of the labour market situation. If the preliminary review is positive, the application is forwarded to the State Secretariat for Migration (SEM) for evaluation and approval.

4.1 Posted workers from non EU/EFTA companies

Posted workers from non EU/EFTA companies and self-employed workers based outside EU/EFTA states must apply for a permit before starting their work just like EU/EFTA based companies and self-employed persons who provide services in Switzerland for more than 90 days per calendar year (cf. 3.4.2 above).

Applying for a work permit:

Apply to the Service étrangers using the official TD form, accompanied by a cover letter and all necessary documents (mentioned on the back of the TD form).

Main necessary documents :

- > Individual application form TD, which can be downloaded from the website of the OCPM
- > A cover letter detailing the length of the posting, where the service will be provided and how the application serves the economic interests of Switzerland.
- > A service contract
- > Detailed information on the business and its employees, using the two forms provided by the OCIRT's foreign workers section

Review by the foreign workers section :

The application is examined by the Foreign Workers Section of the Office Cantonal de l'Inspection et des Relations du Travail (OCIRT), to determine whether it meets the conditions defined by the Foreign Nationals Act and Ordinance on Admission, Residence and Gainful Employment (economic interests of Switzerland, professional qualifications, availability of quota).

Issuance of a work permit :

If the OCIRT reviews the application favourably, the application is forwarded to the State Secretariat for Migration (SEM) for approval. After this approval, the OCPM issues a work permit and the employee can start working in Switzerland. The procedure takes approximately 8 weeks in total to complete.

5. SELF-EMPLOYED PERSONS

5.1 EU/EFTA nationals

EU/EFTA nationals are allowed to work in a self-employed capacity in Switzerland. To do so, they must apply for a self-employment permit. The 5-year permit is issued only if they can supply evidence (in the form of a business plan) that they are able to support themselves through self-employment.

As with paid employment, there are two options: cross-border permit (form F) or residence permit (form M), but the procedure is identical. Applicants wishing to obtain a cross-border permit must show proof of business premises in Switzerland (physical premises, not a mailing address).

They must also provide a business plan of 1-2 pages describing the purpose of their business, as well as the following information:

- > Names and addresses of the business, legal structure, project leader(s)
- > A description of the purposes of the business
- > Number of current or potential clients
- > Working hours per week
- > Projected revenues, and number of employees, if applicable
- > Projected capital investment

5.2 Third state nationals

Self-employment permits are rarely granted to third state nationals. The procedure and criteria for eligibility are described in detail on www.ge.ch/demander-permis-travail-independant/je-suis-ressortissant-etat-hors-ueaele (in French).

In brief, applicants must complete form M and supply a business plan that clearly demonstrates the economic benefits of their business activity for the Canton of Geneva in terms of job creation, investment and potential revenue.

6. APPENDIXES

Individual application form (PDF)
for foreign staff (M)

<https://www.ge.ch/document/ocpm-formulaire-m-demande-autorisation-sejour-avec-sans-activite>

REPUBLICHE ET CANTON DE GENÈVE
Département de la sécurité, de la population et de la santé
Office cantonal de la population et des migrations

Application for Foreign Nationals seeking a Residence Permit with or without profitable activity in Geneva

To be completed in BLOCK CAPITALS (dated and signed before mailing. Additional instructions on the back)

1. Kind of application (tick relevant box)
☐ Profitable activity ☐ Family reunification ☐ Arrival from another canton
☐ Asylum ☐ No Profitable Activity ☐ Medical treatment ☐ Other

2. Beneficiary
 2.1 Surname(s) 2.2 Unmarried name
 2.3 Given name(s) 2.4 Nationality
 2.5 Date of birth 2.6 Place of birth
 2.7 Gender ☐ F ☐ M 2.8 Marital status
 2.9 Mother's surname(s) Given name(s)
 2.10 Father's surname(s) Given name(s)
 2.11 E-mail address 2.12 Phone number

3. Spouse / partner : Arriving also in Geneva ? ☐ no ☐ yes (yes, marital term to be completed)
 3.1 Surname(s) 3.2 Given name(s)
 3.3 Date of birth 3.4 Nationality

4. Children
 4.1 Surname(s) 4.2 Given name(s) 4.3 Date of birth 4.4 Gender
☐ F ☐ M ☐ no ☐ yes
☐ F ☐ M ☐ no ☐ yes

5. Address abroad
 5.1 Full address: Locality: Country:
 5.2 Embassy / consulate responsible for your place of residence

6. Address in Geneva
 6.1 Owner ☐ Tenant ☐ (copy of the lease to be attached) Subtenant ☐ (see next section)
 6.2 Street: No: 6.3 Apartment No:
 6.4 Postal code: 6.5 Locality: 6.7 Given name: 6.8 Floor: 6.10 Number of rooms:
 6.6 City: Surname: 6.9 Floor: 6.10 Number of rooms:
 6.11 Date of arrival in Geneva (month/year)

7. Employer / Independent (to be completed in case of a profitable activity)
 7.1 Company / Corporate name: 7.2 Economic sector:
 7.3 Street: 7.4 No: Locality: Country:
 7.5 Postal code: 7.6 Phone number:
 7.8 E-mail address: 7.7 Phone number:
 7.9 Street: No: Locality: Country:
 7.10 Postal code: 7.11 E-mail address: 7.12 Phone number:

8. Information on Profitable Activity
 8.1 ☐ Employed ☐ 4-month contract ☐ Contract over 4 months ☐ 120-days contract within a 12-month period
 8.2 ☐ Independent activity 8.3 Employed as: 1st Salary: ☐ yes ☐ no
 8.4 Monthly Gross Salary (in Swiss Francs):
 8.5 Duration of the profitable activity: ☐ Permanent as of: ☐ Fixed-term, starting from: to:
 8.6 Business address:
 8.7 Number of hours worked per week:
 8.8 Information on Criminal Record (Optional only for EU / EFTA nationals)

9. Have you ever been convicted in Switzerland or abroad ? ☐ Yes ☐ No

Place/Date: Stamp and signature: Signature: (authorised person)

Space only for use of the Administration

Individual application form (PDF)
for posted workers

<https://www.ge.ch/document/ocpm-formulaire-td-travailleurs-detaches-ue/aele/extra-europeens>

REPUBLICHE ET CANTON DE GENÈVE
Département de la sécurité, de la population et de la santé
Office cantonal de la population et des migrations

Travailleurs détachés (UE/AELE/extra-européens) TD

Compléter en CARACTÈRES IMPRIMÉS Dater et signer avant envoi. Voir instructions complémentaires au dos du formulaire

1. Type de détachement
☐ Indépendant ☐ Salarié
 1.2 Durée du détachement: ☐ Plus de 4 mois ☐ Moins de 4 mois ☐ 120 jours par période de 12 mois
☐ 1ère demande ☐ Renouvellement / Prolongation ☐ Changement d'employeur

2. Bénéficiaire
 2.1 Nom(s) 2.2 Nom(s) de célibataire:
 2.3 Prénom(s) 2.4 Nationalité:
 2.5 Date de naissance: 2.6 Lieu de naissance:
 2.7 Sexe ☐ F ☐ M 2.8 État civil:
 2.9 Mère Nom(s) Prénom(s)
 2.10 Père Nom(s) Prénom(s)
 2.11 Adresse email: 2.12 Téléphone:
 2.13 Signes précédents:

3. Adresse à l'étranger
 3.1 Adresse complète: Localité: Pays:
 3.2 Ambassade / Consulat compétent pour votre lieu de résidence:

4. Adresse à Genève
 4.1 Localité: ☐ (première copie de loi) Sous-localité: ☐ (première copie de loi)
 4.2 Rue: N°: 4.3 No Appartement:
 4.4 Code postal: 4.5 Localité: 4.7 Prénom: 4.8 Nombre de pièces officielles:
 4.6 Chez: Nom: 4.9 Étage: 4.10 Nombre de pièces:
 4.11 Date d'arrivée à Genève (mois/année)

5. Entreprise étrangère / Prestataire de service indépendant
 5.1 Raison sociale/entreprise: 5.2 Branche économique:
 5.3 Rue: N°: Pays:
 5.4 Code postal: Localité: 5.5 Téléphone:
 5.6 Adresse email: 5.7 Téléphone:
 5.8 Mandataire: N°:
 5.9 Rue: Localité: Pays:
 5.10 Code postal: 5.11 Adresse email: 5.12 Téléphone:

6. Données relatives au détachement
 6.1 Détaché(e) en qualité de: 6.2 Nombre d'heures travaillées par semaine:
 6.3 Salaire annuel brut en CHF: 6.4 Prime de détachement en CHF:
 6.5 Durée exacte du détachement: de: à:
 6.6 Client (entreprise ou particulier) suisse:
 6.7 Adresse du lieu de travail:

7. Données relatives au passe personnel (publique facultative pour les ressortissants UE/AELE)
 7.1 Avez-vous fait l'objet d'une condamnation pénale en Suisse ou à l'étranger ? ☐ Oui ☐ Non

Online individual application form
for cross-border staff (F)

<https://www.ge.ch/demander-permis-travail-frontalier/je-suis-ressortissant-etat-membre-ue/aele>

République et canton de Genève

Plus d'informations

Demande pour frontalier F

(Date:)

☒ Demande d'autorisation pour frontalier

Bénéficiaire

Informations sur le (la) bénéficiaire

* Avez-vous en possession d'un autre statut ? ☐ Oui ☐ Non

* Nom(s)

* Prénom(s)

* Nationalité

* Date de naissance

* Lieu de naissance

* Sexe

* Adresse

* Adresse email

* Téléphone

* Adresse du lieu de travail

* Prénom(s) de la mère

* Prénom(s) du père

* E-mail

* Confirmation E-mail

* Numéro de téléphone fixe ou mobile

USEFUL ADDRESSES



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Cantonal Population and Migrations Office - Office Cantonal de la Population et des Migration Service étrangers (OCPM)

Route de Chancy 88 | Case postale 2652 | 1211 Genève 2
+41 22 546 47 95
www.ge.ch/organisation/office-cantonal-population-migrations-ocpm



Foreign Workers Section - Service de la Main-d'Oeuvre Etrangère (OCIRT)

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**Cantonal Labour Relations and Inspection Office
Office Cantonal de l'Inspection et des Relations du Travail (OCIRT)**

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+41 22 388 29 29 | <https://www.ge.ch/organisation/ocirt-direction-generale-office-cantonal-inspection-relations-du-travail>

3 TAX

HOW ARE COMPANIES AND INDIVIDUALS TAXED IN THE CANTON OF GENEVA

This chapter explains the various tax and tax rates applicable to companies and individuals in Geneva, and discusses tax reductions available to new companies.

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1. TAXATION PERIOD

In terms of taxation, there are three distinct periods:

- > The calculation period: the period that serves as the basis for determining how much tax is due.
- > The taxation period: the period for which tax is due.
- > The assessment period: the period during which the tax administration carries out the necessary steps to assess your taxable revenue (profit/income) and wealth (capital/personal wealth).

For physical individuals, the taxation period coincides with the calculation period with regard to cantonal and municipal tax. In other words, 2018 tax (paid by instalments throughout 2018) is assessed on the basis of income earned during the calendar year 2018.

For legal entities, the taxation period coincides with both the calculation period and the financial period. 2018 tax (also paid by instalments in 2018) are assessed on the basis of the financial year 2018 (even if the financial year-end doesn't coincide with the end of the calendar year).

2. COMPANIES

2.1 Main tax

Companies based in Geneva and active in the industrial, commercial, financial or service sectors, are required to pay tax on the following :

| Taxable elements and Type of Tax | Responsible authorities |
|--|---------------------------------------|
| Creation of an incorporated company (SA, Sàrl): stamp duty | <i>Federal Government</i> |
| Net profit: Direct Federal Tax,/cantonal and municipal tax | <i>Federal Government/ Canton</i> |
| Capital and reserves (legal entities): cantonal and municipal tax (since 1 January 1998, capital is no longer taxed at the federal level) | <i>Canton</i> |
| Additional property tax | <i>Canton</i> |
| Distributed profits: withholding tax (security tax) | <i>Federal Government</i> |
| Share transactions: securities transfer tax | <i>Federal Government</i> |
| Sale of goods and services: value-added tax (VAT) | <i>Federal Government</i> |
| Sales and other production inputs: municipal business tax | <i>Municipality</i> |
| Legal acts: registration fees | <i>Canton</i> |

2.1.1 Tax on company creation

Capital contributions to a newly established company (corporation, partnership, Limited Liability Company, cooperative) and any subsequent capital increase are subject to a 1% stamp duty on issuance.

Stamp duty is calculated on the basis of the total capital received by the company in exchange for issuing securities, but at least on the nominal value of the newly issued securities. Contributions in kind are assessed on the basis of their market value.

The following transfers are exempt from stamp duty: shares issued during mergers (or concentrations financially equivalent to a merger), transformations and demergers. The same principle applies to foreign companies transferring their head office to Switzerland.

Furthermore, the first CHF 1 million of capital securities issued at the time of set-up or capital increase of a corporation (SA), a partnership limited by shares, or a Limited Liability Company, is not subject to stamp duty.

2.1.2 Federal profit tax

Companies liable for profit tax

Legal entities that are considered to have legal personality according to Swiss private and public law must pay tax on net profit. These include:

- > All incorporated entities, including corporations, LLC, cooperatives, associations, and foundations based in Geneva;
- > Foreign companies operating in the industrial, commercial, financial or service sectors in Geneva (permanent establishments), or owning property in Geneva.

The first category pays tax on net profits from all sources (worldwide), including capital gains, whereas the second category pays tax only on net profit attributable to the permanent establishment or property in Geneva.

Please note that entities that are not considered to have legal personality according to Swiss law (i.e. simple, limited, and general partnerships) are not treated as tax persons. Partners are therefore taxed as individuals on their profit share and participations in the partnership.

Taxable net profit

Taxable net profit is assessed on the basis of the company's financial accounts, established following recognised financial accounting standards. The company should join a copy of its financial statements to its tax return (including balance sheet, profit and loss statement, and appendixes), signed, if applicable, by the relevant corporate bodies.

The company's net book profit can be adjusted in various ways to take into account legal limits on tax deductions. These limits concern namely:

- > Asset depreciation: deductible from taxable revenue within the limits of general financial usage or by following official rates.
- > General expenses: deductible within the limits of general financial usage.
- > Interest: deductible, provided the interest rate is reasonable and the company is well capitalized.

Foreign income of companies domiciled in Switzerland for tax purposes

Income from abroad is considered taxable profit in Switzerland, unless it falls under the provision of foreign national law or tax treaty.

Switzerland has signed nearly a hundred tax treaties with other nations with the purpose of avoiding double taxation. These treaties directly affect how foreign income is handled for tax purposes.

Swiss-domiciled companies that are effective beneficiaries of income from abroad may take advantages of the provisions of tax treaties.

Elements not taxed in Switzerland (but taxed abroad following relevant national law) include foreign property, and income or profit booked by permanent establishments abroad (branch offices, long-term construction sites, etc.).

Conversely, income derived from foreign movable capital assets (dividends, interest) are fully taxable in Switzerland. Often, such income is subject to withholding tax in the country of origin. One of the advantages of tax treaties is that they allow companies to significantly reduce their foreign tax burden and lower the rate of withholding tax.

For dividends, the rate of withholding tax usually falls to 15% or 5%, or even 0% for participation dividends, while for interests and fees it is generally capped at 10% or 5%, or waived altogether.

When the withholding tax on foreign income is only partially reduced, the remaining tax may, within certain limits, be claimed as a deduction against Swiss tax on the foreign income (as a lump-sum tax credit).

2.1.3 Tax on capital and reserves

Capital and reserves are taxed yearly at the cantonal and municipal level. Since 1 January 1998, they are not taxed at the federal level.

In Geneva, from the tax period 2020 onwards, the cantonal tax rate is 1.8‰ for companies with taxable profit (combined cantonal and municipal tax rate of 4.00‰ for the City of Geneva).

The basic rate of capital tax is reduced to 0.005‰ for the part of the equity capital relating to equity interests, patents and comparable rights and loans granted to group companies (combined cantonal and municipal tax rate of 0,01‰ for the City of Geneva).

Moreover, the cantonal base tax on capital is reduced by the amount of the base cantonal profit tax up to the following maximum amounts:

- > CHF 8'500 in 2020;
- > 25% in 2021;
- > 50% in 2022;
- > 75% in 2023;
- > 100% from 2024.

2.1.4 Additional property tax

An “additional property tax” (impôt immobilier complémentaire, or IIC) is levied on buildings in Geneva. The IIC is calculated on the basis of the property’s fiscal value on 31 December of the relevant tax period, without subtracting debt. If the building is owned and occupied by a legal entity, the IIC rate is 1‰ of the building’s fiscal value. The IIC rate for rental properties is either 1.5‰ or 2‰, depending on whether the legal entity that owns it is a non-profit, is active solely in real estate, or is operating for profit. If the legal entity uses only part of the building for its premises, a reduced rate of 1‰ applies to an amount equal to the capitalization at a rate, fixed every tax period by the Conseil d’Etat, of the rental value of the portion used by the owner; rental value is estimated on the basis of the rental value of similar premises. A rate of 1.5‰ or 2‰ applies to the portion of the building that is rented.

Certain rent-controlled buildings categorized as HBM (lower-income housing), HLM (middle-income housing) or HM (mixed-use housing) may be eligible for a reduction in the rate of IIC. Moreover, since 5 August 2010, buildings that achieve a high or very high energy efficiency rating are IIC-exempt for 20 years.

2.1.5 Profit distribution tax (withholding tax)

From the 2009 taxation period onwards, the Federal Law on the Improvement of Tax Terms For Entrepreneurial Activities and Investments (Enterprise Taxation Reform Act II) eased double taxation for holders of “qualified participations”, i.e. persons holding at least 10% of the share capital or nominal capital of an incorporated company or cooperative.

Dividends and profit shares derived from such participations which are part of an individual's personal wealth are taxed on the basis of 70% of their value at both cantonal and federal level. If the participations are part of commercial wealth, dividends and profit shares, as well as any capital gains derived from the share transactions, are taxed on the basis of 70% of their value at federal level and 60% at cantonal level.

Distributions to shareholders by Swiss companies are subject to a 35% withholding tax ("anticipatory tax"). This tax is levied on dividends and on other benefits with monetary value, which are treated like profit distributions. Swiss residents who file a truthful tax return can claim full reimbursement of withholding tax against cantonal and municipal tax owed.

For foreign residents, withholding tax is generally final, unless their country of residence is party to a tax treaty with Switzerland. In the latter case, they can request partial or total tax credit according to the relevant tax treaty. Treaty-based tax credits are awarded on request only. Generally speaking, they are not awarded directly: the Swiss debtor company deducts the withholding tax at the usual rate (35%), and the foreign resident subsequently applies for reimbursement.

2.1.6 Stamp duty

Stamp duty is levied at the Federal level on certain legal transactions, including the issue or trading of securities – in other words, the creation and circulation of capital – as well as insurance premium payments. Stamp duty is generally levied within 30 days of the relevant legal act.

There are three types of stamp duty:

- > Stamp duty on securities issuance.
- > Stamp duty on securities transfers.
- > Stamp duty on insurance premiums.

Securities issuance stamp duty

Securities stamp duty is levied on the issuance of Swiss shares and bonds (i.e. securities issued in Switzerland by Swiss companies) whether sold in exchange for payment or issued free of charge, at the time when the security is issued, or following an increase in the nominal value of securities, such as shares of corporations, participations of limited liability companies or cooperatives, and dividends rights certificates and participation certificates of Swiss companies or public corporations.

Securities stamp duty also applies to bonds (for instance, loan bonds and medium-term notes) and money market securities issued to Swiss residents.

The rate of stamp duty on the issuance of Swiss securities is 1%.

However, since 1 January 2006, the first CHF 1 million of shares of newly created companies, as well as increases in the capital of corporations or limited liability companies (LLC) carried out by issuing or selling securities, are exempt from stamp duty.

Securities stamp duty is paid by the company issuing the shares.

Exemption from stamp duty also applies to the creation or increase in value of securities in connection with mergers, transformations or demergers of companies or cooperatives, as well as the transfer to Switzerland of head offices of corporations domiciled abroad.

Securities transfer stamp duty

A transfer tax is levied on the purchase and sale of Swiss and foreign securities by Swiss securities dealers (principally banks and pension funds), at a rate of:

- > 0.15% for securities transactions by a person resident in Switzerland.
- > 0.3% for securities transactions by a person domiciled abroad.

The tax is calculated on the conversion value of the security, i.e. the price paid at time of purchase or sale. Transfer tax may be charged to the end client.

In order to preserve the Swiss financial centre's attractiveness at a time of increasing internationalisation in securities trading and intensifying competition with foreign stock exchanges, transfer duty has been revised several times over the past years, and several exemptions have been introduced.

Stamp duty on insurance premiums

This tax is levied primarily on premiums for third-party liability, fire, automobile and household insurance policies.

It is calculated on the basis of the value of the premium, in principle at a rate of 5%, with the exception of single-premium life insurance with a buy-back option, which are taxed at a rate of 2.5%.

Personal insurance such as life insurance with regular premium payments, health, accident, invalidity, and unemployment insurances are exempt from stamp duty.

2.1.7 Municipal business tax

The following physical persons and legal entities are required to pay municipal business tax:

- > Natural physical persons gainfully employed or running a commercial enterprise in the canton, even if they are not entered in the commercial register.
- > Legal entities with gainful activity in the canton of Geneva through a head office or branch office (permanent establishment).

Most municipalities in the canton of Geneva charge this tax, which is estimated on the basis of these three criteria:

- > Average annual revenue of the last two years.
- > Average rent of the premises or properties occupied by the company.
- > Average number of employees.

The tax is charged at a rate of 0.01% to 0.6% of revenue, depending on the nature of the business. For business premises, the rate is 0.5% of rental value. A lump sum of CHF 10 is levied per employee. Business tax rates are set independently by municipalities.

2.1.8 Property registration fee

A cantonal registration fee is levied on most legal acts, including property transactions (sales), which incur a 3% registration fee.

2.2 Tax Rates

From 2020, federal, cantonal and municipal tax has been levied at a fixed rate on the profit of incorporated companies and cooperatives.

- > Federal tax (statutory rate) 8.50%
- > Cantonal and municipal² tax (statutory rate) 7.78%
- > Total tax (statutory rate) 16.28%

These rates apply to profit after deduction of cantonal, municipal and federal tax (with the exception of fines), which are considered tax-deductible expenses. This explains the significant difference between the so-called statutory rate and the actual rate, as a percentage of pre-tax profit. In the example below, the statutory rate is 16.28%, but the actual rate as a proportion of pre-tax profit is 13.99%.

Example :

| | |
|---|---------------|
| Pre-tax profit | 100% |
| <i>Direct Federal Tax (actual rate)</i> | <i>7,31%</i> |
| <i>Cantonal and municipal tax (actual rate)</i> | <i>6,69%</i> |
| <i>Total (actual rate)</i> | <i>13,99%</i> |
| Net profit after tax | 86,01% |

Net profit after tax may be distributed to shareholders after compulsory allocations to reserves have been deducted, at which point they become subject to withholding tax.

Special features

Patents and similar rights: Net profit from patents and similar rights may be taxed at a preferential rate at the taxpayer's request, under certain conditions detailed in the legal provisions.

Additional deduction of R&D expenses: The Finance Department authorizes upon request the deduction of R&D expenses incurred by the taxpayer in Switzerland, directly or through third parties, up to an amount exceeding by 50% the R&D expenditure justified by commercial use. Details of the conditions for applying this measure are listed in the relevant legal provisions.

2.3 Special incentives (tax exemptions granted by decision of the State Council)

2.3.1 Newly-created companies

Significant tax exemptions may be granted to newly created companies in order to facilitate set-up and development. The decision to grant an exemption depends on whether the activity that the company plans to engage in has the potential to deliver economic benefits to the canton and the municipality where it is located, through job creation or the introduction of new technologies. However, companies do not qualify for this exemption if they are in direct competition with an already established company.

The exemption applies to cantonal tax and is progressively reduced over a number of years. The maximum exemption is 100%, and the maximum period is 10 years. For example, the company is 100% tax exempt during its first year of existence; the exemption is then diminished by a factor of 10% every year until the tenth year, when it reaches 10%. The following year, the exemption ends.

JEDI status

One of the Geneva government's main objectives is to encourage innovation and new company formation. The law defining "JEDI" status for innovative new companies aims to simplify administrative procedures for these companies in order to support new business start-ups.

JEDI status significantly simplifies the procedure for innovative new companies to apply for tax breaks. Instead of the complex documentation usually required, the company fills out a simple questionnaire with the purpose of ascertaining the company's innovative nature.

The simplified procedure is reserved for newly formed, innovative companies organized as legal entities, which meet the following 6 conditions :

- > The company is developing innovative goods and services
- > It has a head office or permanent establishment in the canton
- > It is active primarily in the canton of Geneva
- > It is not the result of a merger, demerger, transformation, transfer of an asset or of an enterprise with assets and liabilities, or the extension or resumption of a pre-existing business
- > It is not publicly listed, with the possible exception of specialized exchanges for small and medium enterprises
- > Since the company was created it has devoted at least 35% of its annual expenses to research, of which at least half in Switzerland.

Companies that meet the above criteria and obtain JEDI status can apply to the Cantonal Tax Office for a tax exemption. There is no fee associated with obtaining JEDI status.

For more detailed information, contact the Geneva Economic Development Office (Direction générale du développement économique, de la recherche et de l'innovation).

2.3.2 Corporate restructuring

Tax exemptions are also available for companies already established in Geneva that change their business purpose, or cease production of certain goods in order to develop new products requiring large investments or the adoption of new technical processes. Conversely, a company that reorganizes its activities in the context of the natural development of its business cannot qualify for a restructuring exemption. Exemptions of this kind are granted by decision of the Council of State.

2.4 Value-added tax (VAT)

On 1 January 1995, Switzerland introduced a value-added tax (VAT) compatible with VAT in the EU, in accordance with the principle of competitive neutrality. The introduction of VAT eliminated the concept of wholesaler.

What is VAT?

VAT is a general tax on consumption of goods and services.

Swiss VAT rates

VAT covers four categories of rates:

- > Standard: 7.7%
- > Reduced: 2.5%
- > Accommodation sector: 3.7%

- > Flat rates: They are granted on request to companies with annual revenue of less than CHF 5,005,000 (including VAT), and a total tax liability not in excess of CHF 103,000. Flat rates are special VAT rates for certain sectors and industries, which simplify VAT reporting to the Swiss Federal Tax Administration (FTA) considerably, in that input VAT doesn't need to be calculated. When using one of these methods, tax is calculated by multiplying gross revenue including VAT by the rate of the company's net tax liability or by the flat rate determined by the FTA. However, the company must still indicate the standard VAT rate on all client invoices.

The reduced rate of 2.5% applies to the following goods:

- > Piped water
- > Liquid and solid food items with the exception of alcoholic beverages and of items purchased by the restaurant and catering sector
- > Livestock, poultry, fish
- > Cereals
- > Seeds, plants, cut flowers, etc
- > Medicines
- > Newspapers, magazines, books and printed matter, except for advertisement purposes
- > Radio and TV services, except for commercial broadcasters
- > Sporting and cultural events

VAT-exempt transactions are listed exhaustively in the Ordinance on Article 21 LTVA (health, social insurance, education, culture, insurance, money and capital markets, property sale and rental (except voluntary taxation), etc.)

VAT-exempt transactions include the importation of goods and the provision of certain services to clients outside of Switzerland.

Such transactions are taxed at a rate of 0%, which means that the company can still claim reimbursement of input VAT against them.

VAT-taxable transactions include all transactions that are not exempt or excluded by law from VAT, such as:

- > Supply of goods: the transfer of the right to use the goods (trading) or the supply of goods manufactured on behalf of third parties (production), as well as operations that do not modify the goods (such as checking, adjusting, verifying, etc.). Supply does not necessarily imply transfer: for instance, rental or leasing contracts are considered supplied goods, as is energy (electricity, gas, heat, cold, pressure, vacuum, etc.).
- > Supply of services: transfer of intangible assets or rights (copyright, brands, samples, models, licenses, knowhow, etc.) is also considered to be a service supplied. The same applies to any act involving the renouncing or tolerating of an action or condition (for instance receiving payment in exchange for accepting competition, or conversely a ban on competition).

- > Services supplied by a business to itself: for instance, the purchase of own goods or the construction/repair/renovation of buildings with an intention to sell or rent them.
- > Importation of goods, except for:
 - Goods in small quantities for which VAT does not exceed CHF 5 per customs clearance
 - Goods admitted duty-free
 - Goods admitted under a customs clearance permit for temporary importation or re-export
 - Goods originating in Switzerland returned from abroad
- > Services originating abroad for use or operation in Switzerland, if they are VAT-taxable in Switzerland and their value exceeds CHF 10,000 annually (at which point the initial CHF 10,000 becomes subject to VAT).

Who has to register for VAT?

In principle, all businesses may register for VAT, regardless of their legal form. However, registration is not mandatory for businesses with an annual revenue of less than CHF 100,000 (rising to CHF 150,000 for non-profit sporting and cultural associations and public utility institutions). Please note that if the business is not registered for VAT, it follows that it cannot deduct input VAT.

Businesses in the following categories are not required to charge VAT for certain transactions:

- > Farms, forestry and horticulture businesses for purchases of their own products
- > Livestock traders for revenue from the sale of livestock
- > Milk collection centres for sales of milk to food processors
- > Non-profit sporting associations and public utility institutions managed on a volunteer basis, and whose annual revenue does not exceed CHF 150,000

Businesses may voluntarily register for VAT even when not required to do so, provided that their purpose is to earn a regular income (i.e. they do not operate as a recreation or hobby). Businesses may register voluntarily for VAT at the start of a taxation period.

How to register for VAT?

Annual revenue for VAT is determined on the basis of the consideration in exchange for the delivery of VAT-taxable goods or services rendered on Swiss territory, plus the value of goods or services supplied by the business to itself. Exports of goods and services are also factored into this amount.

Businesses are required to register for VAT by the end of the calendar year during which revenue reaches the threshold amount. Voluntary registration, on the other hand, has no retroactive effect.

The company is responsible for registering for VAT as soon as it meets the conditions for mandatory registration.

2.5 Acquisition tax

The Federal Law on Value Added Tax (LTVA) also established an acquisition tax levied on certain services supplied by companies with their place of business abroad. This tax applies only to services, subject to the place of recipient principle.

Examples :

- > Advertising services
- > Services of consultants, wealth managers, accountants, lawyers, etc
- > Management services
- > Data processing
- > Staffing services
- > Transfer and concession of intangible rights

No acquisition tax is due if the services supplied do not fall under the remit of the law or are tax-exempt.

If the receiver is registered for VAT, he or she must declare and pay tax on these acquisitions.

A receiver who is not registered for VAT must still pay acquisition tax in these two situations: first, if the services purchased exceed a value of CHF 10,000 per calendar year; second, if the recipient is notified in writing by the relevant authorities that acquisition tax is due for services supplied on Swiss territory.

The rate of acquisition tax is the same as VAT.

3. INDIVIDUALS

3.1 Income tax

The income of individuals is taxed at the federal, cantonal and municipal level.

3.1.1 Who has to pay income tax?

The following categories of individuals are liable for income tax:

- > Permanent or short-term residents of Switzerland: on net income from all sources (i.e. their worldwide income)
- > Persons not resident in Switzerland: on income earned in Switzerland, including wages and income from movable capital assets in Switzerland (interest and dividends)
- > Persons not resident in Switzerland: on income from real estate and businesses or permanent establishments located in Switzerland

The first and third category of taxpayers must file an annual tax return. For the second category, tax are generally retained at the source in the form of a payroll tax (deducted directly from wages) or a withholding tax on income from moveable capital assets.

3.1.2 What forms of income are taxed?

Taxable income includes both earned income and income from capital received in the course of the calendar year.

Earned income includes:

- > Employees: all cash payments (base salary, 13th month salary, bonus, gratuities, shares or employee share- options, etc.) and benefits in kind (for example, housing allowance or company car)
- > Self-employed: net profit earned by means of the business activity (in industry, commerce, finance, or other profession); includes any capital gains from transfers effected in the context of the business

Income from capital includes:

- > Income from property in Switzerland, or, if the property is owner-occupied, its rental value (determined by the tax office, but generally much lower than market prices)
- > Interest, dividends and royalties from both Swiss and foreign sources

3.1.3 Income from foreign sources earned by permanent or temporary residents in Geneva Foreign income is considered part of taxable income in Switzerland, unless otherwise provided for by a provision in national law or tax treaty.

Switzerland has signed close to a hundred tax treaties with the aim of avoiding double taxation. These treaties directly affect how foreign income is treated for tax purposes. They may be used by natural persons who are resident in Switzerland and are the effective beneficiaries of such income.

Income not taxable in Switzerland includes income derived from property or from a business or establishment located outside of Switzerland, if provided for by national law. However, this income, though untaxed, is factored into the person's total income in order to determine the rate at which the individual's Swiss income is taxed.

Conversely, income from foreign movable capital assets (dividends, interest) is fully taxable in Switzerland. As this income is often subject to withholding tax in the source country, one of the advantages of tax treaties is that they allow a significant reduction in foreign tax and withholding tax.

For dividends, withholding tax generally drops to 15%, 10% or 5%, while for interest and fees it is generally limited to 10% or waived altogether.

When withholding tax on foreign income is only partly reduced, the remaining tax may be deducted from Swiss tax on the foreign income (lump-sum tax credit).

3.1.4 What deductions can I claim?

The main allowable deductions against income include:

- > Social insurance (social security) payments, including contributions to a recognized occupational pension fund,
- > Interest payments,
- > Insurance premiums (up to a defined threshold with regard to Direct Federal Tax),
- > For employees: professional expenses, on the basis of a lump sum deduction or real expenses, within limits,
- > For self-employed: operating expenses according to usual accounting practices (cost of earning the income).

When some of the person's total income is tax-exempt in Switzerland (for example rent from a property abroad), some of these deductions are adjusted accordingly.

3.1.5 What tax rates apply?

Income tax rates are progressive and depend on the level of net income, that is, total income minus legally accepted deductions. Income splitting was recently introduced at the level of the canton; this allows certain categories of taxpayers filing jointly to pay tax on their joint income at the rate of half their joint income. For instance, a couple with a joint net income of CHF 120,000 would both pay income tax at the rate applicable to an income of CHF 60,000.

The following categories of taxpayers may benefit from splitting:

- > Married couples living together
- > Registered partners
- > Taxpayers who are widowed, divorced, separated (whether legally or not) and living with minor or adult children or relatives who meet the legal definition of a dependent (see LIPP, art. 39, para. 2)

3.2 Property capital gains tax

Property capital gains (net profit from the sale of a building or part of a building located in the canton) realized by companies are considered profit and therefore subject to profit tax.

Similarly, property capital gains realized by real estate professionals are considered personal income and therefore subject to income tax.

Property capital gains realised by individuals who are not real-estate professional are subject to a special tax, known as the property capital gains tax. This tax is assessed on the difference between the price of purchase and price of sale, and depends on the number of years the property has been held by the owner; long-term capital gains (property held for over 25 years) are tax-exempt, whereas short-term capital gains (property held for under two years) are taxed at a rate of 50%.

3.3 Wealth tax

Personal wealth is taxed at the cantonal and municipal level, but not at the federal level. The following categories of taxpayers are liable for wealth tax:

- > Individuals who are permanent or short-term residents of Switzerland: on their net wealth (except for wealth in the form of property or businesses located outside the canton, which is not taxed but taken into account to determine the applicable rate).
- > Individuals who are not permanent or short-term residents of Switzerland: on their personal wealth in the form of property or businesses located in the canton, at a rate determined by their worldwide wealth.

As a general rule, wealth tax is levied on the taxpayer's entire wealth. The following assets are considered part of personal wealth: moveable assets (shares, bank deposits) and real estate (for example, buildings); life insurance and annuities with a guaranteed surrender value; capital invested in a business or farm. Household goods and everyday personal possessions are not taken into consideration. Wealth tax is levied on net wealth, defined as the taxpayer's gross wealth minus all his/her liabilities. Wealth tax is progressive, with rates ranging between 0% and approx. 1%.

USEFUL ADDRESSES



Geneva Economic Development Office - Direction générale du développement économique, de la recherche et de l'innovation (DG DERI)

Rue de l'Hôtel-de-Ville 11 | 1211 Genève 3
+41 22 388 34 34 | innovation.ge.ch



Cantonal Tax Office - Département des finances et des ressources humaines, Administration fiscale cantonale (DF-AFC)

Rue du Stand 26 | Case postale 3937 | 1211 Genève 3
+41 22 327 70 00 | www.ge.ch/contacter-afc



**Swiss Federal Tax Administration, VAT Division, Taxation Service
Administration fédérale des contributions (AFC)**

Schwarztorstrasse 50 | 3003 Berne
+41 58 462 71 06 | www.estv.admin.ch

4

WORK AND SOCIAL INSURANCE

WHAT RULES DO EMPLOYERS HAVE TO FOLLOW WHEN HIRING STAFF ?

This chapter discusses important aspects of Swiss Labour Law and explains the social insurance contribution system.

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1. ASPECTS OF SWISS LABOUR LAW

1.1 Work contracts

- > A work contract is considered to have been entered into from the time an employer and an employee express their will to exchange labour for a wage.
- > A work contract can be established either in writing or verbally. However, the contract must always be in writing in the case of apprenticeships, and whenever the conditions of employment agreed to by both parties differ from those defined by the Swiss Code of Obligations (e.g. redundancy notice period, payment of wages in case of illness or accident, etc.).
- > A work contract can be established for a fixed term (temporary contract) or for an indefinite time period (permanent contract). In the latter case, the law provides that, unless both parties agree otherwise, the first month is a probationary period, during which either party may terminate the contract by giving notice of 7 calendar days. The probationary period cannot extend beyond three months, unless the employee is absent due to illness, accident or the fulfilment of a civic duty (such as military service) during that time. If this is the case, the probationary period is extended for the duration of the absence.
- > For permanent contracts and temporary contract for a period of more than one month, the employer must provide the employee with the following information in writing, no later than one month after work commences:
 - > The name of the parties to the contract
 - > The date when work began
 - > The employee's duties
 - > Salary and any benefits provided
 - > Weekly working hours
- > Any changes to the information in this written document during the course of employment must also be communicated to the employee in writing, no later than a month after they come into effect.

The work contract is characterized by the relation of subordination it establishes between the employee and the employer. It thus differs fundamentally from service, agency, consultant, or partnership contracts, in which the contractor is self-employed.

This distinction is significant especially with regard to compulsory social insurance contributions (see Social Insurance table, page 63).

1.2 Working time

According to Swiss law, the maximum working hours per week are:

- > 45 hours for workers in manufacturing, office staff, technical staff and other employees, including retail sales staff
- > 50 hours for all other employees, unless they belong to a regulated profession (professional drivers, hospitals and clinics, hotels, restaurants and cafés, construction and civil engineering, etc.)

Weekly working hours are specified in the work contract. The Swiss average is 41.7 hours per week, and the Geneva average is 41 hours (Federal Statistical Office, 2018).

Working hours may also be defined by a binding agreement between unions of employees and employers of a given branch of activity (Convention collective de travail).

1.3 Day work

- > According to the law, day work takes place between the hours of 6 a.m. and 8 p.m. and evening work between the hours of 8 p.m. and 11 p.m., unless the employer obtains an exemption.
- > The employer does not need to obtain prior permission to introduce evening work, but employees must be consulted beforehand.
- > The maximum duration from the beginning of day work to the end of evening work is 14 hours, including breaks.
- > For employees under 19 years of age, the maximum duration is 12 hours and the total working day cannot exceed 9 hours. Work must end before 8 p.m. on school nights.

1.4 Night work

Night work hours takes place between the hours of 11 p.m. and 6 a.m., unless the employer has obtained an exemption.

Night work is permitted in certain industries (hospitals and clinics, hotels and restaurants, pharmacies, bakeries, etc.). Conversely, it is prohibited in all others. However, cantonal and federal authorities may authorize night work under certain conditions, provided the employees agree (the relevant authorities are, at the cantonal level, the Office Cantonal de l'Inspection et des Relations de Travail – OCIRT in Geneva; and, at the federal level, the State Secretariat for Economic Affairs - SECO).

If night work is temporary – i.e. a total of less than 25 nights per year – employees are entitled to 25% overtime pay. As of the 25th night, employees must receive a 10% time-equalisation allowance, and the employer must take special protective measures.

1.5 Vacations and public holidays

By law, employees are entitled to 5 weeks of paid vacation per year until their 21st birthday, and 4 weeks thereafter.

Employees receive their full salary during vacations. In most cases, and especially upon termination of the contract, foregone vacations cannot be replaced by a payment in cash.

Vacation dates must be mutually decided with the employer and must include at least 2 consecutive weeks at some point in the year.

In the canton of Geneva, work is in principle not allowed on the following public holidays:

- | | |
|--------------------------------------|---|
| > New Year (1 st January) | > 1 st August (National Day) |
| > Good Friday | > Jeûne Genevois (second Thursday in September) |
| > Easter Monday | > 25 th December |
| > Ascension Thursday | > 31 th December |
| > Pentecost Monday | |

1.6 Individual and collective dismissals

Barring a few exceptions (e.g. immediate termination for just cause), employers must give employees due prior notice of dismissal.

The legal notice periods are:

- > 7 days' notice during the probationary period
- > 1 month's notice for the end of a calendar month during the first year of employment
- > 2 month's notice for the end of a calendar month from the 2nd to the 9th year of employment
- > 3 month's notice for the end of a calendar month thereafter

Note that the law allows the parties to a work contract to agree in writing to other notice periods, under certain conditions. However, the notice period should not be less than a month, unless otherwise specified in a collective work agreement and in that case only during the first year of employment.

An employer cannot give notice of dismissal in certain circumstances (inappropriate time):

- > While the employee is performing a compulsory civic duty, such as military or civilian service (as well as 4 weeks before and afterwards)
- > While the employee is completely or partially unable to work (for 30 to 180 days depending on years of work with the same employer)
- > During the pregnancy of an employee and the sixteen weeks following birth
- > While the employee is participating in an overseas aid project ordered by the federal authorities.

If notice was given immediately before any of the circumstances described above, it is suspended for the entire period.

Moreover, a dismissal may be considered unlawful in certain specific cases, especially if the reason is related to the employee's personality (e.g. because of origin, religion or membership in a trade union). If a Court finds the dismissal to be unlawful, the Court may under no circumstances order the reinstatement of the dismissed employee in the company. The only penalty provided for by law in the event of unfair dismissal is compensation, which can amount up to the equivalent of six months' salary.

The same contractual notice period and provisions with regard to inappropriate times also apply to mass dismissals (including for economic reasons).

Companies must inform the Cantonal Employment Office (OCE) of any decision to close down their operations or to reduce staff numbers. In Geneva, it becomes mandatory as of 6 dismissals in a 30-day period.

2. SOCIAL INSURANCE SCHEMES

Employers must register with a compensation office in order to contribute to the compulsory social insurance schemes presented in the table below.

Provisions for employers

Combined employer/employee contribution rates (as of 1st January 2022):

| | EMPLOYER | EMPLOYEE |
|--|----------|----------|
| OASI/DI/IC (<i>Old Age and Survivors Insurance/Disability Insurance/Income Compensation</i>) (AVS/AI/APG in French) <i>Contribution is compulsory as of January 1 following the 17th birthday and until age 65 for men and age 64 for women.</i> | 5,3% | 5,3% |
| Unemployment Insurance <i>Up to an annual salary of CHF 148,200.</i> | 1,1% | 1,1% |
| Solidarity Unemployment Insurance <i>Combined solidarity contribution deducted from the part of the salary above CHF 148,200 (no upper limit).</i> | 0,5% | 0,5% |
| Family Allowances <i>Geneva rate.</i> | 2,4% | |
| Maternity Insurance <i>Only in Geneva.</i> | 0,043% | 0,043% |
| Early Childhood Care Contribution <i>Only in Geneva.</i> | 0,07% | |
| Occupational Retirement scheme (LPP) (Average rate as a % on insured salary) <i>Contribution is compulsory as of January 1 following the 17th birthday and until age 65 for men and age 64 for women. If the annual income is above CHF 21,330, respectively monthly income is above CHF 1,777.50. If the work contract is planned to last 3 months or more.</i> | 6,5% | 6,5% |
| Loss of Earnings Insurance in case of Illness (LCA) <i>The daily allowance insurance protects your employees against loss of salary in case of illness. Coverage varies between 80% and 90% for up to 730 days, with waiting periods ranging from 3 to 60 days.</i> | 0,9% | 0,9% |
| Accident Insurance (LAA) - Occupational Accidents (AP) * Non-occupation Accidents (ANP)* <i>In the event of work disability, this insurance covers 80% of the salary up to a maximum of CHF 148,200 per year, as well as treatment costs. Premiums for compulsory insurance against non-occupational accidents are due as soon as the activity with one employer exceeds 8 hours per week.</i> | 0,8% | 1,3% |

* Average rate as a percentage of gross salary.

An online contribution simulator is available on the web site of the Fédération des Entreprises Romandes:

<https://www.fer-ge.ch/web/fer-ge/calculateur-charges-salariales-employeur>.

Provisions for self-employed persons

Self-employed persons are also required to contribute to the Swiss social insurance system. The amount of your compulsory contribution to OASI/DI/IC, Family allowances, Maternity insurance and Childhood Care contribution is determined on the basis of your taxable net income.

As of 1st January 2022, the contribution rate for OASI/DI/IC is currently 10%. The rate for self-employed persons is progressive up to an annual income of CHF 57,400. The minimum threshold is CHF 9,600.

| Cantonal | Insurance | Annual Income | Rate |
|----------|-----------------------------------|-------------------|---------|
| Geneva | Family Allowance | Up to CHF 148,200 | 2,4 % |
| Geneva | Maternity Insurance | No upper limit | 0,043 % |
| Geneva | Early Childhood Care Contribution | No upper limit | 0,07 % |

An online contribution simulator is available on the web site of the Fédération des Entreprises Romandes:

<https://www.fer-ge.ch/calculateur-charges-sociales-independant>.

An accountant, lawyer or notary can provide advise on which compensation office best meets the needs of your business.

General information is available from the registration section of the Cantonal Social Insurance Office (Office Cantonal des Assurances Sociales, OCAS) and the Fédération des Entreprises Romandes in Geneva.

The Federal Social Insurance Office provides detailed information on the Swiss social insurance system on its web site: www.bsv.admin.ch.

3. REGULATED ACTIVITIES

Generally speaking, Switzerland applies the principle of free trade and free enterprise. Consequently, most professions can be practiced without obtaining a permit or permission.

However, a relatively small number of professions are regulated, or subject to authorisation. We advise you to check whether this might apply to your profession.

A list of regulated professions and the relevant requirements, as well as the governmental bodies responsible for reviewing them, is available from the State Secretariat for Education, Research and Innovation (SERI, Effingerstrasse 27, 3003 Berne) and the web site www.sbf.admin.ch

It is impossible to ensure that these lists are always up to date. However, they provide a general sense of the scope of regulated activities. We highly recommend you to check all information directly with the relevant government authorities.

The Geneva Economic Development Office (Direction générale du développement économique, de la recherche et de l'innovation) can also provide information on this matter.

USEFUL ADDRESSES



Cantonal Social Insurance Office - Office Cantonal des Assurances Sociales (OCAS)

Rue des Gares 12 | Case postale 2696 | 1211 Genève 2
+41 22 327 27 27 | www.ocas.ch



Affiliations Section - Fédération des Entreprises Romandes Genève (FER Genève)

Rue de St-Jean 98 | Case postale 5278 | 1211 Genève 11
+41 58 715 32 50 | Email : affiliations@fer-ge.ch | www.fer-ge.ch



Cantonal Labour Relations and Inspection Office Office Cantonal de l'Inspection et des Relations du Travail (OCIRT)

Rue David-Dufour 1-5 | Case postale 64 | 1211 Genève 8
+41 22 388 29 29 | Email : reception.ocirt@etat.ge.ch
<https://www.ge.ch/organisation/ocirt-direction-generale-office-cantonal-inspec-tion-relations-du-travail>



Federal Social Insurance Office - Office Fédéral des Assurances Sociales (OFAS)

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