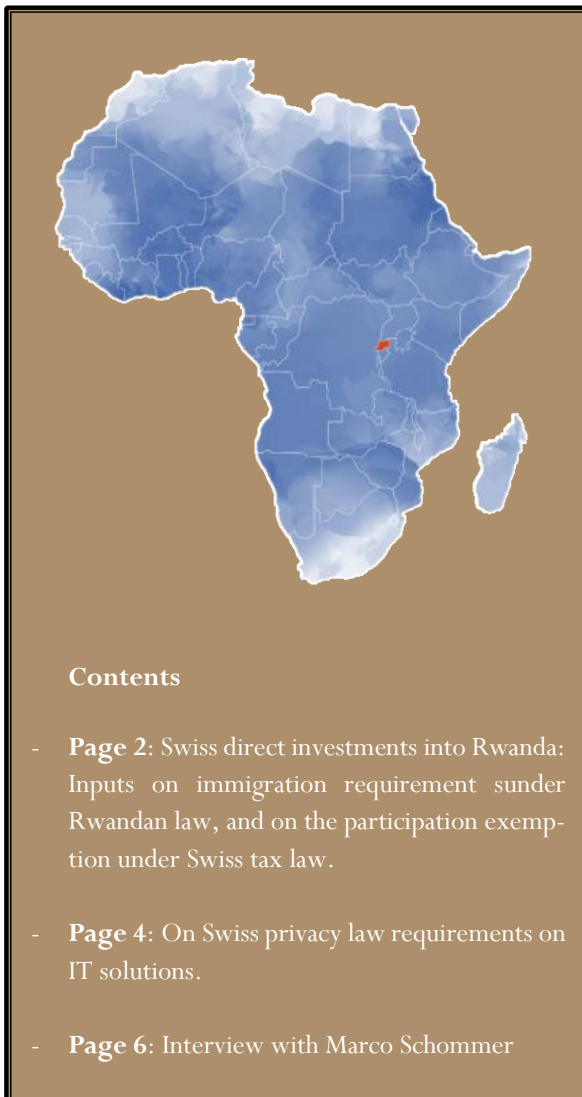


GHR *beyond* - Africa Edition

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Rwanda

GHR beyond is our informative newsletter on inter-continental topics. In the Africa Edition, we provide concise information once a quarter on important key figures of a destination country in Africa and what entrepreneurs should consider from here to there and from there to here. In this edition we want to put the flashlight on Rwanda.



Overview

Rwanda has made remarkable progress in its economic development over the past decade, with an average annual GDP growth rate of around 8%. The government's focus on promoting private sector development, infrastructure investment, and regional integration has helped to diversify the economy and attract foreign investment. Key sectors of the economy include agriculture, services, manufacturing, and tourism. Rwanda has also been a leader in leveraging technology to drive economic growth, and runs initiatives to become the financial hub for the entire East African Community. Reaching 51/100 on the 2022 Corruption Perception Index issued by Transparency International, Rwanda ranks amongst the top 5 African countries with the lowest corruption, only beaten by the Seychelles, Cabo Verde, and Botswana.

In 2022, Switzerland imported a total of about 42 tonnes of goods from Rwanda with a total value of about CHF 0.3 million (mainly vegetables, coffee and tea), while exports to Rwanda amounted to about 255 tonnes and a total value of about CHF 4 million (mainly pharmaceuticals and machinery).

Although trade between the two countries remains modest, Switzerland's Sub-Saharan Africa Strategy identifies Rwanda as one of the regional lion economies. This makes it one of the African countries that harbour high economic potential, particularly in terms of investment and trade, and that are characterised by dynamic growth.

About 110 Swiss nationals live in Rwanda, while about 350 Rwandan nationals live in Switzerland.

In this issue of the GHR *beyond*, we shall focus on main legal questions for Swiss direct investors into Rwanda, as well as key privacy considerations for Rwandan IT solution providers when offering solutions to Swiss customers.

To Rwanda from Switzerland

On the Participation Deduction for Rwandan Subsidiaries

Introduction

If a taxpayer is subject to taxation for the same situation in two different countries, this constitutes double taxation. To avoid such situations, Switzerland has concluded double taxation agreements (DTAs) with several countries.

Currently, there is no DTA between Rwanda and Switzerland. Accordingly, certain situations can lead to a double tax burden. At least partially compensating for this tax disadvantage is the participation deduction known in Switzerland.

Multiple taxation occurs not only when the taxpayer and the taxable object are identical but also when a company has to fully tax the profits distributed by its affiliated company (**Subsidiary**). While it is not the same taxpayer in this case, the economically equivalent profit is taxed multiple times. The participation deduction takes this into account and leads to a reduced profit tax and, depending on the Canton, also to a reduced capital tax.

Requirements to be met for the Participation Deduction on Profits

Swiss companies can claim a reduction of their profit tax in the form of a participation deduction at the federal and cantonal level. The company must meet one of the following alternative requirements:

1. Be involved in the Subsidiary's basic or nominal capital by at least 10%; or

2. Be involved in the Subsidiary's profits and reserves by at least 10%; or
3. Hold participation rights with a fair market value of at least CHF 1 million.

If one of these conditions is met, the tax on the net profit is reduced in proportion to the net earnings from the participation rights compared to the total net profit. The percentage reduction in tax is calculated as follows:

$$\frac{(\text{net earnings from participation} \times 100)}{\text{total taxable net profit}}$$

Or put simply: The net earnings from the participation in the Subsidiary are as good as tax-free for the Swiss parent company.

Requirements to be met for the Participation Deduction on Capital Gains

Further income from a participation can also arise when participation rights are sold with a profit. Accordingly, the participation deduction is also granted for capital gains realized from the sale of substantial participations. The following cumulative conditions must be met:

1. The proceeds from the sale exceed the cost of acquisition, and
2. The sold participation accounts for at least 10% of the subsidiary's basic or nominal capital, or
3. creates a claim to at least 10% of its profits and reserves, and
4. The sold participation was owned by the Swiss company for at least one year.



Expatriate workers whose professions fall under the "occupations on demand list" have fewer work permit requirements and their permits are almost guaranteed.

Conclusion

Even without a DTA, a Rwandan Subsidiary can be financially attractive to a Swiss parent company, as Rwandan taxes on the business results and dividend payouts of the Rwandan Subsidiary are fully applicable, but the so created net earnings can flow into the Swiss parent company in a tax-optimized manner.

Immigration into Rwanda – Things Expatriates need to know

Introduction

Having an ideal corporate structure or trade relationship in Rwanda or with Rwandan counterparties is one step – another one is getting one's feet down on the ground. Rwanda in the past years has seen an increase in investments in various sectors from both Rwandans and foreign individuals as well as both local and foreign companies. As a result, an increase in expatriates coming into the country has also been recorded.

In this part of the GHR beyond, we discuss the face of immigration for foreign investors or expatriates that may wish to invest or work in Rwanda.

Type of Permits for Expatriates

The immigration law of Rwanda offers an investor's permit to investors and employment permit to expatriates who are looking to invest or work in Rwanda. Both permits allow the recipients residency and execution of paid labor for a period of two years, which are renewable upon expiry.

The permits also allow the recipients' dependents, such as spouses and children, to relocate to Rwanda for the same period granted to the recipient. The dependents' permits are acquired upon application for the same.

The requirements for the permits mentioned above vary depending on the type one wishes to apply for.

An investor's permit is majorly straight forward as one would have to - among others - provide proof of investment together with a registration of a company in Rwanda. Different from an investor's permit, an employment permit is slightly more complicated in its requirements. Rwandan immigration law provides

for two categories of expatriate workers.

Expatriate workers whose professions fall under the "Occupation on Demand List" (ODL) have fewer work permit requirements and their permits are almost guaranteed. The ODL is an official list of occupations for which skills are lacking or in short supply on the Rwandan labour market.

Where the expatriate's skills do not fall under the occupations on demand list, a set of requirements have to be met. Amongst other requirements, the expatriate worker must be sponsored by their employer and the expatriate must possess the required qualifications or relevant work experience.

On the Priority of Rwandans in particular

Employers who seek to employ non-ODL expatriates are required to demonstrate that they are unable to find a suitable employee on the Rwandan labour market. Having so demonstrated, the employer can then lodge a sponsorship for an expatriate worker to fill a nominated position.

To be able to prove that they failed to find an employee suitable for the job on the Rwandan market, the Employers are required to undergo a labor market test where the first opportunity is given to Rwandan nationals to bid for the job.

Conclusion

As many nations, permits for expatriated to live and work in Rwanda do not come for free, but require careful planning and following the permit requirements under Rwandan law. However, Rwanda welcomes highly skilled employees, depending on the demand of the market, and offers attractive permit availability privileges.

From Rwanda to Switzerland

On Swiss and European Privacy Compliance Requirements for Rwandan Software Developers

The General Data Protection Regulation (**GDPR**) is a comprehensive data privacy regulation implemented by the European Union (**EU**) in 2018. It aims to protect the personal data and privacy of EU citizens, regardless of where the data is processed. As of September 2023, also Switzerland will introduce a new privacy law which vastly complies with GDPR (together with the GDPR the **Privacy Law**). As a software developer from a third country, understanding and complying with Privacy Law is crucial to access the Swiss and European Market.

Privacy Law Principles

There are seven core principles which form the foundation of data protection:

- 1) Lawfulness, fairness, and transparency: Ensure that data processing is legal, fair, and transparent for the data subjects.
- 2) Purpose limitation: Collect and process personal data only for specific, explicit, and legitimate purposes.
- 3) Data minimization: Limit the amount of data collected and processed to what is necessary for the intended purpose.
- 4) Accuracy: Keep personal data up to date and correct any inaccuracies.
- 5) Storage limitation: Retain personal data only for as long as necessary for the stated purpose.
- 6) Integrity and confidentiality (security): Protect personal data from unauthorized access, loss, or damage through appropriate security measures.
- 7) Accountability: Demonstrate compliance with Privacy Law by documenting data protection policies and practices.

Identify Personal Data

Under Privacy Law, personal data refers to any information relating to an identifiable individual. Examples include names, addresses, email addresses, IP addresses, and even cookie identifiers. Your software

should be designed to handle personal data responsibly, ensuring that it is only collected, stored, and processed when necessary.

Honor Data Subject Rights

Privacy Law grants individuals several rights concerning their personal data. Your software should provide functionalities for users to exercise these rights resp. to make sure that your software customer can manage such requests of exercised rights, in particular:

- 1) The right to access their data.
- 2) The right to rectify inaccurate data.
- 3) The right to erasure (the "right to be forgotten").
- 4) The right to (fully or partially) restrict processing.
- 5) The right to data portability: Individuals should be able to obtain and transfer their electronic personal data between different service providers.
- 6) The right to (fully or partially) object to data processing.

Software as a Service (SaaS)

If software is offered including hosting (SaaS solution), Swiss and European customers will additionally require certain privacy safeguards with regard to data transfers (usually by conclusion of so-called Standard Contractual Clauses), which contain additional obligations with regard to data protection, data security, and incident management and reporting.

In Conclusion

As a software developer, you are basically not responsible for how your customer uses the software, as you provide for a system, not for content. However, if you want to be successful on the European or Swiss market, you must demonstrate that your software is compatible with Privacy Law, as otherwise customers are unlikely to consider your solution. Furthermore, we strongly recommend to have clear contractual agreements in place that, amongst other matters, contain provisions on the separation of responsibilities between you and the customer in order to make sure that you are not liable for Privacy Law breaches a customer commits in using your software. Such contractual agreement is of even greater importance for SaaS providers.

How it is in Practice

Knowing the legal requirements for intercontinental business relations is only one side of the coin. It is at least as important to get involved in local everyday life and to be able to deal with the particularities and customs.

We met Marco Schommer for an interview and asked him about his impressions. After starting his career at ETA SA, the largest watch manufacturer in Switzerland, he spent years at Bulgari SA in Neuchâtel, Switzerland and around the world building up the service and repair department and, before emigrating, was allowed to lead the renowned international watchmaking school Wostep as temporary CEO for almost two years. Since 2019, the man born in Appenzell has been living in Kigali, the capital of Rwanda, where he emigrated with his wife. Marco Schommer is Managing Director of the Magnet Institute in Rwanda. The Magnet Institute is a training organisation that will provide professional vocational training in Rwanda and later throughout Africa.



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May you introduce yourself to our readers?

My name is Marco Schommer, 54 years old, and a resident of Kigali, the capital of Rwanda, since 9 December 2019. My wife, a Rwandan who also holds a Swiss passport, and I have been considering emigrating from Switzerland for over 13 years. The reasons were manifold. The most important of them was my wife's desire to run her own fitness studio as a fitness instructor in a new market. And my intention was and is to dedicate the last 10 - 15 years of my working life to one of the most urgent and, in my opinion, most meaningful challenges in Africa: To promote value-based, competent and practical vocational training. By the way, the step of emigration was then recorded in the popular programme of Swiss Television (SRF1), Auf und Davon, despite Covid restrictions in the 11th season and even translated into French.

What do you do and how did it come about that you built the bridge between Switzerland and Rwanda?

Today, I am the CEO of The Magnet Institute, a training organisation that will provide professional vocational training in Rwanda and later throughout Africa. We are a start-up owned by 28 successful Rwandan SME entrepreneurs, founded at the end of 2022. These entrepreneurs are all members of an alumni organisation formed from the graduates of the entrepreneurship development programme of the Swiss foundation Business Professionals Network (BPN). BPN has been active in Rwanda for twelve years and has retained over 6,000 decent jobs and gained another 6,000 through the trained entrepreneurs - an impressive achievement. Besides access to capital, the availability of well-trained professionals and especially managers is the biggest challenge for these SMEs. There are universities offering management courses for young students on the one

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Marco Schommer

hand, and more than 400 vocational schools in Rwanda on the other, but both offers are often very unpractical and theoretical. The graduates do not find jobs. The employees of the SMEs, on the other hand, do not find any practical training opportunities that would train them to a higher level parallel to their work. The model of dual apprenticeship training and subsequent management training by professional associations and trade unions, which is common in Switzerland, does (almost) not exist here.

When I arrived in Rwanda at the end of 2019, I had no prospect of earning a living, apart from confidence. Thanks to a few contacts I had made during my holidays in Rwanda in 2018, I was invited to a conference organised by the SDC and the Swisscontact Foundation on the topic of "dual vocational training" in February 2020. As we all know, Covid started in March (Rwanda was very restrictive in this respect), which was not very conducive to finding a professional challenge. However, in April 2020, Swisscontact offered me a consultancy assignment on the topic of curriculum for dual training in eight different professions. This gave me a deep insight into the governance of the education authorities as well as first contacts with entrepreneurs in the country. After one year and the completion of the mandate, I was convinced that only entrepreneurs can

determine what needs to be trained, otherwise vocational education would remain theoretical. Therefore, I was excited about BPN's mission and got the opportunity in March 2021 to join locally as Director of Entrepreneurship Development. We did the coaching and some of the training of the entrepreneurs locally ourselves, but for the training of the basic seminars we flew in experienced Swiss experts and entrepreneurs,

which had a significant positive impact on the behaviour and knowledge of the entrepreneurs. This experience and the relationship with Switzerland has led these same entrepreneurs to want their own training organisation, "The Magnet Institute", to be based on Swiss values and quality. That is why we have sought cooperation with the Swiss College of Management and Technology, sfb-esg-soa, and recently tried it out successfully with a pilot training course. So this is the bridge with Switzerland. Personally, I think that Rwanda, as one of the safest and most corruption-free countries in Africa, has a lot in common with Switzerland and I could imagine that Rwanda could be a good pilot country for Swiss SMEs to do their first business with or from Africa.



What do you particularly like about this activity, where do you see opportunities?

I love networking! Good education needs excellent curricula and exceptional trainers and facilitators. It also needs financial support for a few years, especially until the institute becomes self-sustaining. Such sponsors and professionals can only be found through personal relationships. I am also very good at building organisations, and after a few months we have already reached a good level of legal incorporation and financial management. The challenge of becoming the best-known training institution of its kind in Africa is extremely motivating.

Rwanda may be small, but thanks to today's conditions it has what it takes to become a real "Lioness State". Despite the tax burden, which is now gradually improving (the profit tax has just been improved by 2% and will be 20% of profits in a few years) and thanks to the legal security, the state offers many opportunities for foreign investors. These are increasingly being taken up by various European, American and Asian

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Marco Schommer

companies. All these projects need local entrepreneurs, skilled workers and capable managers - people we train.

What are your biggest challenges with Rwanda?

The biggest challenge for Rwanda itself is certainly the rapid population growth and the limited resources (Rwanda has very few raw material resources) as well as the discrepancy between its own development and

that of neighbouring countries. In my opinion, the participation of SME entrepreneurs in the development of the country is also a challenge, because up to now the country has had to rely on a strong state power with practically no alternative. The country has to concentrate on exporting services and higher-value goods (due to the landlocked situation and the size of Rwanda), which in turn can only be achieved with well-trained skilled workers. This is not impossible - a few decades ago, Singapore was also just a poor country on a very small area.



Each issue of *GHR beyond* is intercontinental, but also very local. We always prepare content with one of our local partners, with whom we collaborate on legal issues with local relevance. We sincerely thank our partners for this tremendous effort and the opportunity to build intercontinental bridges with local expertise on this side and the other.

This edition of *GHR beyond* - Africa Edition has been produced by the following authors and law firms. Please contact the authors at any time if you have any questions or require further information on a particular topic.

For content
related to Swiss law



For content
related to Rwandan law



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