Single Family Offices in Switzerland
Legal and Taxation Framework

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The number of single family offices in Switzerland has increased steadily in recent years. This article describes the decisions that need to be taken when establishing a single family office, and which factors play a role. Family offices, which can dispose over the assets of the principal or a third party, for example a trust or a foundation, are deemed de lege lata to be financial intermediaries and are therefore subject to the Swiss Anti-Money Laundering Act. Both the regulatory and taxation frameworks must therefore be considered. One particular question that arises is whether single family offices providing investment advice services require FINMA authorisation as distributors of collective investment schemes. The taxation framework for companies and private individuals from the perspective of Swiss single family offices is also covered. Finally, five examples of typical single-family office structures and their regulatory and tax treatment are described.

I Introduction*

Largely unnoticed by the public gaze, a large number of single family offices have been established in Switzerland. While multi-family offices have developed in part from asset managers or single family offices, a substantial number of single family offices have either been set up in Switzerland or have moved their headquarters into Switzerland from abroad. The reasons for this development are many: the availability of qualified specialists, the quality of the available infrastructure and banking sector services, and the high degree of stability of the legal system. In addition, an attractive taxation environment coupled with the quality of life in Switzerland, the provision of good state and private schools, and security considerations also play a key role.

Single family offices are attractive from an economic viewpoint, as they generally manage assets and often perform a wide range of additional services. They create and sustain qualified jobs and employ large numbers of external service providers such as banks, asset managers, tax consultants and lawyers, thereby contributing to a high level of wealth creation. It is therefore in the economic interests of Switzerland to remain as an attractive location for family offices.[1]

II Starting Point

A Establishing a Single Family Office

The motive for establishing a single family office is usually the sale of a family business or the accumulation of liquid assets from profits arising from shareholdings held by a family.[2] Once the liquid assets have reached a certain size,[3] the asset owners are faced with the decision of whether and to what extent services (both asset management and other services) should be provided by a single family office or whether complete reliance should continue to be placed on external service providers. This decision is difficult, and places great demands on the decision-maker. The costs and the demands placed on the asset managers are factors that exert a major influence on this decision. As well as just the management costs, a strategy for the future management of the assets is of major importance: wealthy individuals who wish to be active as entrepreneurs frequently set up a single family office. However, the passive administration of assets may also justify the establishment of a single family office.

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1 See also ANDREAS J. BÄR/DANIEL LEU, "GwG-Unterstellung von Single Family Offices?", GesKR 1/2010, pp. 57 et seq.

2 Cf. JOACHIM SCHWASS/HÅKAN HILLERSTRÖM/HOLGER KÜCK/COLLEEN LIEF, wise wealth, London 2011, p. 63 with further references.

3 Due to the costs associated with a single family office, its establishment is only regarded as worthwhile if the assets exceed 500m USD/Swiss francs. Cf. for example SCHWASS/HILLERSTROM/KUCK/LIEF (footnote 2), p. 63 et seq.

B Choice of Location

When selecting a location for establishing a single family office, legal, regulatory and tax considerations play a major role.[4] If the family members wish their residence to be in the same domicile as the single family office, the security situation, quality of life and standard of schools take on a particular significance in addition to the taxation aspects.[5] There are some countries, of which Switzerland is one, which meet many of these conditions and are therefore attractive as locations for single family offices.[6] However, in the light of increasing regulation of financial markets, there is a risk of Switzerland becoming less attractive in the medium term as a location for single family offices if legislation passed to protect inexperienced investors also encompasses providers such as family offices whose clients have no need of such protection.[7]

C Legal Form

The term "family office" has no legal definition in Switzerland. In essence, all legal forms provided by law for commercial purposes are permissible. However, companies limited by shares, in other words public or private limited companies (AG or GmbH) are preferred for the simplicity they offer for the ownership structure of a family office.

D Ownership Structure

The ownership structure of a single family office is generally determined by the services that are offered, the key persons who manage the single family office and the requirements of the family.
If the services provided are limited to fields such as bookkeeping, concierge services, reporting and other activities outside asset management and investment advice, the company is usually owned by the principal. The persons providing the services can be easily replaced in such a case. Confidentiality of data and sensitive information, including on the departure of an employee, is usually one of the main concerns of the principal and this is easier if the principal controls the family office directly. The shares in the single family office in such instances are either owned directly by the principal, or by a trust or foundation associated with him or her.

If the main activities of the family office include investment advice or asset management, the ownership structure is often arranged differently with the goal of harmonising the interests of the principal with those of the key persons who manage the assets. The key persons are often granted a share of the profits for this reason. In many cases the key persons will hold all or at least some of the shares in the single family office.[8]

4 SCHWASS/HILLERSTROM/KUCK/LIEF (footnote 2), p. 65.
5 SCHWASS/HILLERSTROM/KUCK/LIEF (footnote 2), p. 65 et seq.
6 These include e.g. Monaco, Singapore, the United Kingdom, some of the States of the USA, Bermuda and Hong Kong as well as Switzerland.
7 See also Section II Lit. D below.
8 As an alternative to allowing employees to participate in the single family office profits, models exist in which the single family office manages part of the assets of the employees together with the assets of the principal. For the corporate governance of single family offices, see VANESSA FAKTOR, New Family Office Governance, Thesis St. Gallen 2012, Bamberg 2013, in particular pp. 66 et seq.

E Services provided

Core single-family office services include asset consolidation, asset reporting, asset structuring, asset management, investment advice, asset allocation advice and risk management. These are consequently services whose purpose is the ongoing management of the assets of the principal in line with their overall investment objectives.

Other services provided by single family offices include tax advice, real estate/property services (purchase, sale, research, management), inheritance planning, pension planning, services in relation to philanthropy, lifestyle management, concierge services, trustee services, will execution, family training, family governance, services in connection with acquiring and disposing of businesses, finance, insurance, opening accounts and establishing companies and foundations. These services are of a more administrative or legal nature and are not subject to any requirement for authorisation. Depending on the size of the assets to be managed and the size of the family, these services are provided by the family office itself or covered by recourse of delegation to external advisers.[9]

III Regulatory Framework

A Type of Services offered

Switzerland does not impose any general requirement for family offices to be authorised. Whether or not a family office needs authorisation or must comply with other regulations depends on the services offered. Obligations of this kind exist particularly in relation to the provision of financial intermediary services, and possibly also in relation to investment advice.

B Power of Disposition over the Assets of Others

1 Designation as a Financial Intermediary

When family offices effect payments for the principal or administer his/her assets themselves, this presupposes that they have the power of disposition over the assets in question. Under the Swiss Anti-Money Laundering Act ("AMLA"),[10] financial intermediaries are persons who *on a professional basis accept or hold on to deposit assets belonging to others*, or help them to invest or transfer such assets.
Such persons are subject to the AMLA.[11]

Activity as a financial intermediary is deemed to be *on a professional basis* if:

- the gross profit earned annually exceeds 50,000 Swiss Francs,[12]

9 See also SCHWASS/HILLERSTROM/KUCK/LIEF (footnote 2), p. 68 et seq.
10 Federal Act on Combating Money Laundering and Terrorist Financing in the Financial Sector of 10th October 1997, SR 955.0.
11 Art. 2 para. 3 AMLA.
12 Art. 7 para 1 lit. a AMLO (Anti-Money Laundering Ordinance) of 11th November 2015; SR. 955.01).

- contractual relations are commenced or maintained with more than 20 contracting parties per annum,[13]

- an indefinite power of disposal exists over other peoples' assets with a value of more than 5m Swiss Francs,[14] or

- transactions are conducted with a total volume in excess of 2m Swiss Francs per annum.[15]

It is possible that, in individual cases, a gross profit of less than 50,000 Swiss Francs will be earned. If this is the case, a single family office will generally not maintain contractual relations with more than 20 family members and this criterion is therefore usually not relevant for single family offices. However, family offices that manage the assets of a principal generally have the power of disposition over more than 5m Swiss Francs.[16] It is also likely that the total volume of transactions conducted annually is greater than 2m Swiss Francs. Family offices that meet the corresponding criteria are therefore fundamentally deemed to be financial intermediaries subject to the AMLA.

Financial intermediary services for the benefit of close associates such as spouses and family members up to the third degree of kinship are expressly excluded from the ambit of the AMLA if an annual gross profit of less than 50,000 Swiss Francs is earned in respect of them.[17] Similarly, financial intermediary services provided within a group for other group members are not subject to the AMLA. In the first instance, the exemption is based on the family ties, and in the second on economic reasons. We are of the view that single family offices owned wholly by the principal should be exempt from the ambit of the AMLA for precisely such economic reasons.[18]

De lege lata, however, it should be assumed that single family offices controlled by the principal are subject to the AMLA if the above criteria regarding the professional basis are met.

2 Consequences of being Subject to the AMLA

As a financial intermediary subject to the AMLA, a single family office is under a number of obligations. The most important obligation is either to join a self-regulatory organisation (SRO) to combat money laundering or to submit directly to the Swiss Financial Market Supervisory Authority (FINMA). There is also an obligation to appoint a responsible person for AMLA who receives the corresponding training, and who has an obligation to keep specific customer records (AMLA files), plus a duty of notification. Compliance with these obligations entails the expenditure of both time and money, which in relation to the purpose of the AMLA of preventing and exposing money laundering, does not always appear justified in the case of single family offices. The AMLA files must also be audited by an auditor from the SRO. For security reasons and due to negative experiences with authorities in their home countries, principals from non-European countries often have difficulty with the fact that personal data and details of the broad financial situation are disclosed

13 Art. 7 para. 1 lit. b AMLO.
14 Art. 7 para. 1 lit. c AMLO.
15 Art. 7 para. 1 lit. d AMLO.
16 BÄR/LEU (footnote 1), p. 58.
17 Art. 7 para. 4 et seq. AMLO.
18 Cf. BÄR/LEU (footnote 1), p. 61 et seq.

to an authority or an SRO officer. Experience has shown that a certain amount of convincing is necessary to reassure a principal that his/her data are still properly protected in the hands of an SRO officer or FINMA. The administrative expense of SRO membership is a factor to be taken into account when establishing a family office structure, and under some circumstances may be the deciding factor in choosing whether or not to provide financial intermediary services in Switzerland.[19]

C Asset Management

Asset managers in Switzerland do not currently require authorisation. Although they are usually deemed to be financial intermediaries under the AMLA and therefore subject to the AMLA, they are not subject to any prudential supervision by a supervisory authority. Asset managers may however voluntarily join a professional organisation for asset managers. As a member of such a professional organisation, they must abide by the regulations of that organisation. Furthermore, the asset management contract used must comply with the minimum requirements of FINMA or the organisation in question.[20] The corresponding industry bodies are also generally organised like an SRO or offer parallel services as indeed provided by an SRO. Joining an industry body therefore only entails a relatively minor additional cost compared to joining an SRO. Conversely, membership of an industry body has advantages in terms of the requirements of the Swiss Collective Investment Schemes Act.[21]

The intention of the Swiss Federal Council is that asset management services in the future may only be provided if authorisation has been obtained. In addition, asset managers are to be subject to new prudential supervision. The corresponding requirements and obligations will be incorporated in the FinIA (Financial Institutions Act). How this Act and therefore the framework for asset managers will look in detail in the future is not yet certain and is the subject of future parliamentary debate.[22]

The draft bill of FinIA[23] does however provide for an exemption for asset managers who only manage assets owned by persons linked to them economically or by family ties.[24] According to the wording of the draft at least, single family offices will consequently not require authorisation in future to provide services to the principal.[25] Whether single family offices with ownership models under which the employees invest in parallel with the principal or manage part of their assets together with the assets of the principal will benefit from this exemption, remains to be seen.[26] The underlying investor protection intention of the authorisation obligation does not in our view impose any obligation to submit to supervision merely because a single family office may manage comparatively small asset values belonging to its own employees, especially since persons who manage assets solely as part of employee stock option schemes are also excluded from the scope of application of the FinIA.[27]

19 Money laundering is punishable under Article 305a of the Swiss Criminal Code, irrespective of whether a Swiss single family office is deemed to be a financial intermediary within the meaning of the AMLA or not.
20 See FINMA circular 2009/1, Guidelines on Asset Management.
21 Federal Act on Collective Investment Schemes of 23rd June 2006 (SR 951.31); see also Section III lit. E below.
22 See also the report by the Federal Department of Finance on the results of the consultation on the Financial Services Act (FinSA) and the Financial Institutions Act (FinIA) of 13th March 2015.
23 Both the FinIA and FinSA currently exist as drafts.
24 Art. 2 para. 2 lit. a FinIA draft.
25 See the dispatch on the FinSA/FinIA of 4th November 2015, BBl 2015, p. 8901 et seqq. (p. 9'018).
26 See also footnote 8.
27 Art. 2 para. 2 lit. b FinIA draft.

D Investment Advice and other Financial Services

Under the FinIA draft, investment advice on its own does not require authorisation either. However, the requirements on all providers of financial services are to be made more stringent. The corresponding requirements and rules of conduct are contained in the draft of the Federal Financial Services Act (FinSA). The definition of financial services is cast quite widely in the draft: it covers not only investment advice but also asset management, or the acquisition or sale of financial instruments on behalf of clients.[28] Under the existing draft, most family offices would be likely to come under the scope of the FinSA.

In particular, the FinSA contains obligations to provide information, a requirement to examine investments in relation to their suitability and appropriateness for clients, documentation and accountability rules, organisational responsibilities and duties of transparency and care. However, compliance with these obligations will not be monitored in the case of financial service providers who do not require authorisation. From the perspective of family offices, it should particularly be noted that according to the FinSA, only those customer advisers properly listed on the proposed new register will be allowed to be employed. The FinSA provides for certain simplifications in the provision of services to professional clients. According to the draft, professional clients include companies with professional treasury operations[29] and also high-net worth private individuals who have declared that they wish to be treated as professional clients.[30] The classification of clients in the FinSA draft overlaps largely with the client classification in the CISA. From the viewpoint of single family offices, the same questions then arise. The principal will generally meet the criterion of a high-net worth private individual. However, this may not always be the case as regards their spouse. Nor will children and grandchildren necessarily own sufficient assets to be deemed professional clients. If the assets of the principal and his or her family members are not held directly, the question arises whether a professional treasury operation exists and what requirements it must meet. The following additional questions also arise: Is it sufficient for a company acting as a trustee to appoint an investment specialist, a trustee or a controller to monitor the investments regularly? Is the requirement also met if a private trust company as trustee assigns this task to an external provider? Under what circumstances in relation to the designation as a professional customer is it possible to look through a trust and focus on the family members behind the trust?[31] Can this also be done in the case of a *discretionary trust* where the beneficiaries have no direct right to the assets held by the trust? The answers to these questions are open and show that both the client classification in the CISA currently in force and in the draft of the FinSA are not designed to cover the specific situation of family offices. Since statutory protection and its concomitant restrictions are only justified where there is a genuine need for protection, a generous exemption rule regarding the definition of single family office clients as professional clients would be most welcome.

28 Art. 3 lit. d FinSA draft.
29 Art. 4 para. 3 lit. g FinSA draft.
30 Art. 5 para. 1 FinSA draft.
31 So-called "look through" issue.

E Distribution of Collective Investment Schemes

Distributors of Swiss or foreign collective investment schemes need authorisation under the CISA.[32] The definition of distribution is widely-cast and simply includes every incidence of an offer of a collective investment scheme, and any advertising for them.[33] Finally, the definition of distribution includes any reference to collective investment schemes. The significance of this is that investment advisers are also deemed to be distributors if they recommend collective investment schemes to their clients.

The CISA provides for a number of exemptions. For example, asset managers are exempt from the obligation to obtain distribution authorisation if they are independent asset managers subject to the AMLA and an industry body recognised by FINMA, and use an asset management contract that complies with the minimum standards of such an industry body.[34]

Under article 3 para. 2 lit. a CISA, the provision of information and the subscription of collective investment schemes at the instigation of or on the own initiative of investors, *especially* in the context of investment advisory agreements or for execution-only transactions, is not deemed to constitute distribution. This means that investment advisers who pass on such information solely within the scope of advisory agreements are fundamentally not deemed to be distributors. The Collective Investment Schemes Ordinance (CISO)[35] defines "advisory agreements" as agreements that a) are aimed at a long-term advisory relationship in return for a fee, and b) are concluded in writing with a regulated financial intermediary or independent asset manager subject to the AMLA and an industry body recognised by FINMA.[36] The end effect is that the CISO limits the exemption under article 3 para. 2 lit. a CISA such that it only applies to investment advisers who are simultaneously members of both an SRO and an industry body as asset managers. This limitation, which goes well beyond the wording of the Act, is not especially practical in our view; it cannot have been the intention of the legislator that a simple investment adviser has to join an SRO and an industry body for asset managers despite not providing any kind of financial intermediary services. In our view, it would therefore make more sense to incorporate appropriate substantive requirements regarding investment advisory agreements directly into the CISO.[37]

A further exemption exists with regard to the distribution of exclusively Swiss collective investment schemes to qualified investors.[38] Any distribution of this kind does not require authorisation.[39] Swiss authorisation is also not required if foreign collective investment schemes restricted to qualified investors are exclusively offered from Switzerland to qualified investors abroad.[40] However, relying

32 Art. 13 par a 1, Art. 13 para. 2 lit g and Art. 19 para. 1 CISA
33 Art. 3 para. 1 CISA
34 Art. 3 para. 2 lit. c CISA.
35 Collective Investment Schemes Ordinance of 22 November 2006; SR 951.311.
36 Art. 3 para. 3 lit. b CISO.
37 For example, a prohibition on accepting commissions or finder's fees or alternatively a duty to pass on such fees in full to the respective customers.
38 Qualified investors under Article 10 para. 3 CISA include companies with professional treasury operations as well as regulated financial intermediaries (cf. Section E above). Under Article 10 para. 3lit. a CISA high-net worth individuals may declare that they wish to be treated as qualified investors. The specific requirements to be met by private individuals wishing to be treated as qualified investors are set out in Article 6 CISO. As already mentioned in Section III lit. D, the main question facing family offices is whether all the participating family members meet the criteria of article 6 CISO or, if the assets are not held directly, whether the contracting partner (e.g. a foreign private foundation) has a professional treasury operation.
39 Art. 13 para. 1 CISA e contrario; FINMA circular 2013/9, margin no. 62.
40 Art. 2 para. 1 lit. w CISA e contrario.

on this exemption in relation to activities as an investment adviser is difficult, as many foreign funds do not expressly exclude non-qualified investors even if they are fundamentally aimed at qualified investors.

From the viewpoint of Swiss family offices, the question of the requirement for authorisation for distributing collective investment schemes is difficult; it needs a specific analysis of the services offered, and the financial products used.

IV Taxation Framework

A Taxation Framework at Company Level

1 Liability to Tax

Family offices in the form of a legal entity are subject to unlimited tax liability in Switzerland if they have their legal seat or place of effective management in Switzerland.[41]

2 Corporate Income Tax

In general, the net income earned by a Swiss family office as a legal entity, which may derive from investment advice, asset management or other personal services, is subject to corporate income tax at federal, cantonal and communal level.[42]

The effective corporate income tax rate is 7.83% at federal level. At cantonal and communal level, there is tax competition and the effective tax burden ranges from approximately 3.5% in Meggen in the Canton of Lucerne to approximately 16.6% in various municipalities of the Canton of Geneva.

Depending on both the business model and the specific structure of the family office, there are numerous tax planning options available to reduce the corporate tax burden.

In general, the interest charged on loans granted to a company by its shareholders must be kept at arm's length. The Swiss Federal Tax Administration (SFTA) publishes an annual guide of interest rates deemed to be on an arm's length basis. If the agreed interest rates on the company loan exceed the rates published by the SFTA, the burden of proof that these rates are still in line with the arm's length principle rests with the company. If proof cannot be provided, the excessive amount is deemed to be a dividend distribution, which is subject to withholding tax. Such a deemed

41 Art. 50 of the Federal Law on Direct Taxation of 14th December 1990 (DBG; SR 642.11).
42 Art. 57 of the Federal Law on Direct Taxation of 14th December 1990 (DBG; SR 642.11).

distribution further results in a correction of profits at company level to the extent that the interest paid is higher than the rates that would be charged on an arm's length basis as the excess payment is not accepted as business expenditure and is therefore not tax deductible.

The same applies to services that are provided on an underpriced basis to family members or other affiliated third parties.

3 Capital Tax

Companies pay capital tax at cantonal and communal level, and many cantons have a fixed minimum rate for capital taxes. Some cantons even provide methods for offsetting capital tax against corporate income tax. Furthermore, capital taxes are also characterised by large differences between cantons and individual municipalities as a result of the existing tax competition. Accordingly, in the Canton of Uri capital taxes are set at a super low rate of 0.001%, while the Canton of Basel-Stadt has the highest rate with 0.525%. Lower capital tax rates apply for holding companies and domiciliary or auxiliary companies.

4 Withholding Taxes

Distributions by a Swiss family office in the form of dividends or other benefits in kind are subject to withholding tax at a rate of 35%.[43] The transaction giving rise to the tax liability must be declared to the SFTA within 30 days of the dividend or payment in kind being due, using the appropriate form.

Underpriced services (that is, services not charged on an arm's length basis) provided by the single family office to an affiliated third party have consequences for both withholding tax and corporate income tax. Under the Swiss Withholding Tax Act, the distribution of a dividend equalling the amount of the missing sum is imputed. Since the sum in question is regarded as having already been distributed, the amount of the difference is deemed to be only 65% of the imputed dividend which is then grossed up to 100%, resulting in an effective tax burden of 53.84% on the actual distributed dividend. As such, profit distributions are generally not declared by taxpayers but are only discovered during subsequent tax periods by the tax authorities; in most cases no tax credit can be given for the withholding tax paid.[44]

If the beneficiary is resident in Switzerland and has correctly declared the dividend income in their tax return, the recipient of the dividend is entitled to claim a refund of the withholding tax.[45] The withholding tax therefore assumes a guarantee character in a domestic context. If the taxpayer has

43 Art. 4 para. 1 and Art. 13 para. 1 (a) Federal Law on Withholding Tax of 13th October 1965 (VStG; SR 642.21).
44 For the purposes of income tax, if the payment is not made directly to the beneficiary a gift to the recipient is imputed based on the three-cornered relationship theory (*Dreieckstheorie*), and a gift tax may have to be paid.
45 Art. 21 et seq. VStG.

not correctly declared dividend income in the relevant tax return, they then forfeit any claim to a refund of the withholding tax.[46] A declaration is possible at any time until the tax assessment becomes final.[47]

In an international or cross-border context, a full or partial refund can be claimed based on a double tax convention or the Savings Taxation Agreement.[48] The double tax conventions provide for a non-recoverable tax (*Sockelsteuer*).[49] If the relevant conditions are met (tax domicile in the respective treaty country, beneficial ownership, declaration), a claim exists for a refund of the difference between the withholding tax of 35% and the non-recoverable tax. For the non-recoverable tax, it is generally possible to receive a credit or an exemption in the respective tax treaty country (relief methods under the OECD-MA).

The Tax Information Exchange Agreement between the EU and Switzerland provides for a tax exemption of dividends for a parent company (but not an individual) resident in one treaty country if an interest of 25% is held for at least two years. The rules in most recent double tax conventions signed by Switzerland are similar, granting a zero tax rate under certain conditions (depending on the interest in the company and the holding period of such an interest). Many of the older double tax conventions provide for only a reduced rate.[50] In these cases, the withholding tax liability can be fully or partly declared by notification to the SFTA.

If, in the international context, the requirement to keep the interest for a certain period is not met in order to benefit from the reduced tax rate under the applicable double tax convention or the Tax Information Exchange Agreement, a refund of the difference may still be claimed after fulfilling the holding requirement based on the *Denkavit* decision.

As a consequence, it might be worth interposing a holding company between the Swiss family office and the principal if the family office generates profits which are remitted to the principal abroad. This should particularly be considered in cases where there are also other economic reasons in favour of such a structure.

5 Value added Tax

A single family office is subject to value added tax (VAT) as soon as it engages in entrepreneurial activity. If the annual turnover exceeds 100,000 Swiss Francs, submission of a VAT return is compulsory. There is a statutory exemption for a turnover of less than 100,000 Swiss Francs. However, in such cases the company may opt in to ensure the right to input tax deduction.

46 Art. 23 VStG.
47 Swiss Federal Tax Administration (SFTA), circular no. 40, Withholding Tax, of 11 March 2014.
48 Cf. Art. 10 OECD-MA and Art. 11 OECD-MA.
49 For an overview see SFTA, Treaty Limits of Foreign Taxation (as of 1 January 2015), at https://www.estv.admin.ch/estv/de/home/internationales-steuerrecht/fachinformationen/quellensteuer-nach-dba.html, accessed on April 18 2017.
50 Cf. SFTA, Treaty Limits of Foreign Taxation (as of 1 January 2015) (n 49).

a) Export of Financial Services

If financial services are exported to family members who are domiciled abroad for tax purposes, these services are in principle outside the territorial scope of Swiss VAT, as the Federal Act on Value Added Tax (MWSTG) operates on the so-called *Empfängerortprinzip*, a principle based on the location of the recipient. Further exemptions exist, in particular in cases of services provided in connection with real estate/property in Switzerland.

b) Import of Financial Services

If financial services are imported from abroad for the benefit of a single family office, then the services are generally subject to import duty under Article 45 et seq. MWSTG, provided an annual turnover of 100,000 Swiss Francs is achieved or services in excess of 10,000 Swiss Francs are imported that are subject to import duty.

6 Stamp Duty

Share issues and capital contributions are in general subject to stamp duty at a rate of 1%, although no tax is charged on an allowance of 1m Swiss Francs. Further exemptions exist, particularly in restructuring cases.

7 Securities Transfer Tax

Depending on its business model and actual activities, a family office can be deemed to be a securities trader for securities transfer tax purposes. In addition to banks and "parabanking" companies, natural and legal persons are regarded as securities traders if their activities consist predominantly of (i) trading in taxable securities for third parties, or (ii) acting as intermediaries in the buying and selling of taxable securities as investment advisers or asset managers.[51] A family office can also be a securities trader for securities transfer tax purposes if taxable securities (e.g. shares or bonds) with a value of more than 10m Swiss Francs were booked in its last balance sheet.

A securities trader is generally subject to securities transfer tax and also liable for half the tax for each contracting party that is not registered as a securities trader or able to show that it is exempt from such tax.[52] The tax on securities issued by a domestic Swiss issuer is 0.15% and 0.3% for securities issued by a foreign issuer.[53]

51 Art. 13 para. 3 Federal Law on Stamp Duty of 27th June 1973 (StG; SR 641.10).
52 Art. 17 StG.
53 Art. 16 StG.

8 Risks associated with Offshore Structures

As described above, foreign legal entities are subject to unlimited taxation in Switzerland if they are effectively managed from Switzerland.[54] If the family office owns foreign subsidiaries, particularly in offshore countries, or if the family office provides comprehensive management services for such companies, then those companies might be considered as being effectively managed from Switzerland and will consequently be subject to unlimited taxation. This also results in other risks related to directorships in such companies because the board of directors is jointly and severally liable for the payment of certain taxes and social security contributions.

The effective place of management is the place where the company's existence is centred for business purposes, where the company's business is conducted, and where the actions necessary as a whole to achieve the objectives set out in the articles of association are taken.[55] Day-to-day management can be identified as just such an activity. The Swiss Federal Supreme Court distinguishes the management of a business from purely administrative activities and from the operations of the senior management of the company in cases where these are limited to exercising control over the business management. The locations of the board meetings, the company's annual general meeting or the residence of shareholders are not the determining factors.[56]

Consequently, when including offshore companies in a Swiss family office, it should be ensured that such companies have enough actual substance at their domicile.

B Taxation at the Principal Level

Dividends and other benefits in kind received by family members by virtue of their shareholding in a single family office are subject to income tax if the members are resident in Switzerland. If the costs incurred by the single family office for the benefit of family members or other affiliated third parties are not borne by the members themselves, then a dividend distribution to the principal and a gift from him/her to the recipient of the benefits in kind will be assumed.[57]

1 Income Tax

Dividends and benefits in kind remitted to the principal as a shareholder are subject to income tax at federal, cantonal and communal level.[58] The DBG provides for partial taxation to relieve the burden of double taxation. The cantons are free to decide whether to adopt the federal solution or to apply the partial rate method.[59] In the partial taxation method, 60% of the dividends, shares in profits, surpluses

54 Art. 50 DBG.
55 Peter Athanas/Giuseppe Giglio, in: Martin Zweifel/Peter Athanas (eds.), Commentary on Swiss Tax Law I/2b, Art. 50 DBG N 10, with references to the case law of the Swiss Federal Supreme Court.
56 BGer 2A.321/2003 of 4th December 2003, E. 3.1. An offshore company whose activities are limited to granting loans and which does not have sufficient infrastructure is deemed by the Swiss Federal Supreme Court to be simply a special-purpose vehicle that carries out administrative activities (BGer 2C_1086/2012 of 16th May 2013, E. 2.4)
57 So-called three-cornered relationship theory (*Dreiecksttheorie*) for income tax purposes.
58 The marginal tax burden without church tax ranges from 22.5 in Walchwil in the Canton of Zug to 46 % in various municipalities of the Canton of Geneva.
59 Swiss Tax Conference (SSK), Circular no. 32, Mitigation of double taxation and its effects on intercantonal tax elimination, 1 July 2009, p. 2.

on liquidation and benefits in kind from shareholdings of at least 10% in the share or ordinary capital of a company limited by shares are taxed.[60] The shareholdings held by jointly assessed persons such as spouses, registered partners, children in parental custody, etc. are taken together when assessing whether the threshold has been reached.[61] The design of the partial taxation method means that it results in a potential reduction in both the taxable income and the applicable tax rate.

In some cantons the partial rate method, which provides for taxation of the respective income at a reduced rate,[62] is used.[63]

2 Wealth Tax

Wealth is subject to a wealth tax in all cantons. The wealth tax varies between cantons and municipalities, as the latter are free to set their taxes as a multiplier of the cantonal taxes as part of their fiscal autonomy.[64]

a) Relevant Wealth

Wealth is generally assessed at the end of the tax period or the conclusion of the tax liability.[65] For individuals, the tax period is in harmony with the calendar year.[66] In the case of listed securities, the applicable price is the prevailing one on the last day of the year in question. For non-listed securities, the company is valued by using the mean value method (*Praktikermethode*).[67]

b) Discount

A discount can be applied in the cantons for minority shareholdings (30%). Whether a discount can be granted on the basis of a minority shareholding is a question of the actual legal structure and control rights.[68] Consequently, the discount is also applied to a majority shareholding if the voting rights are such that no control is exercised over the company.[69]

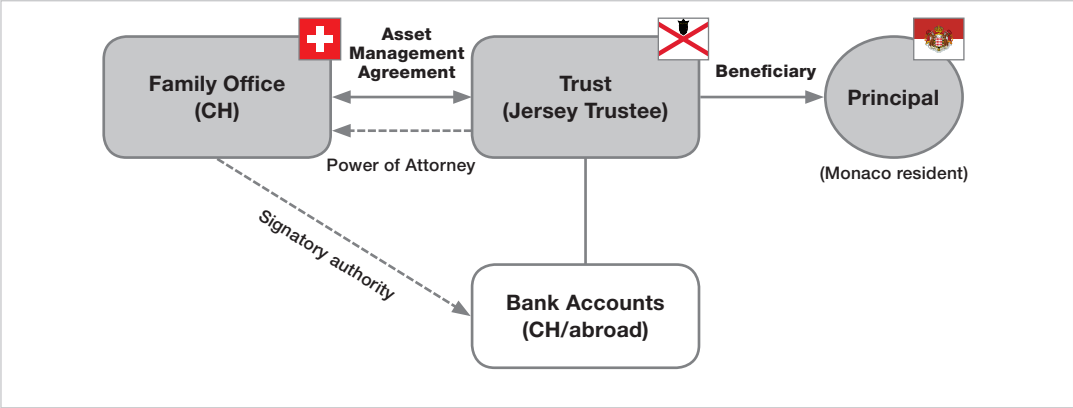
60 Art. 20 Abs. 1bis DBG
61 SFTA, Circular no. 22, Partial taxation of income from shareholdings in private assets and restriction of the tax relief on loan interest, 16 December 2008, p. 3.
62 E.g. the Canton of Zürich, § 35(4) StG ZH. The income from a shareholding of at least 10% is taxed at half the applicable rate.
63 Cf. also SSK, Circular no. 32 (n 59), p. 2.
64 The wealth tax ranges from 0.11 % in Hergiswil in the Canton of Nidwalden to 1.03 % in various municipalities in the Canton of Geneva.
65 Art. 17(1) StHG.
66 Art. 15(1) StHG.
67 Under the mean value method, the earning value is doubled and added to the substance value, which is then divided by three. The earning value is calculated in the cantons using two different models, whereby the average corrected financial result of the last two or three years is included and multiplied by the annual capitalisation rate published by the SFTA. See on this SSK circular no. 28, Guideline for Valuing Non-listed Securities for Wealth Tax Purposes, 28 August 2008, N 10, p. 32 et seq. However, the value can be determined in other ways if better knowledge of the market value demands this. Cf. SSK, Commentary to Circular no. 28, Guideline for Valuing Non-listed Securities for Wealth Tax Purposes, Kommentar 2014, 28 August 2008, p. 2.
68 Purely contractual restrictions, such as those in a shareholder pooling agreement, are of no relevance for tax purposes. SSK, Commentary to Circular no. 28 (n 67), p. 2.
69 However, shareholdings of persons jointly assessed for tax purposes are calculated together. SSK, Commentary to Circular no. 28 (n 67), p. 72.

V Typical Structures

The structures considered below refer to single family offices domiciled in Switzerland. They differ as regards a) the contracting parties, who can be the principal, a trustee, a foundation or an (offshore) company, b) the services provided and c) the residence of the principal.[70]

A Asset Management

1 Family Office as Asset Manager for a Trust/Foundation



A single family office domiciled in Switzerland has an asset management contract with the asset owner in Switzerland or abroad, in the illustrated example with the trustee of a Jersey trust. The asset management contract gives the family office the power to manage specific assets of the trust (e.g. in a Swiss bank account or deposit account) and to dispose over them as part of the asset management. Any restrictions regarding the asset management[71] only affect the internal relationship between the family office and the asset owner. The asset owner, i.e. a trustee or foundation, holds the assets for the principal who is the beneficial owner of the assets.[72] The assets belong to the trustee or foundation and are deposited at a bank in Switzerland or abroad. A safe custody agreement exists between the bank and the asset owner, and a current account may be held there as well. The single family office thus holds an administrative power of attorney as against the bank.[73] The principal usually has no right of disposition or instruction against the bank, but at most a right to information.

70 The following examples assume that the principal is resident in Monaco (examples A and B) or in Switzerland (example C). In examples A 1 and B 1, the assets are held by a Jersey trustee for a Jersey trust.
71 For example, in relation to the proportions of shares and bonds.
72 In the case of what are known as *irrevocable and discretionary trusts*, the question of the beneficial owner can often only be answered after analysing the trust documents and the actual situation.
73 This power of attorney is usually governed by the law of the domicile of the bank. It can be restricted so that the family office can only carry out investments without having the power to purchase or dispose of assets.

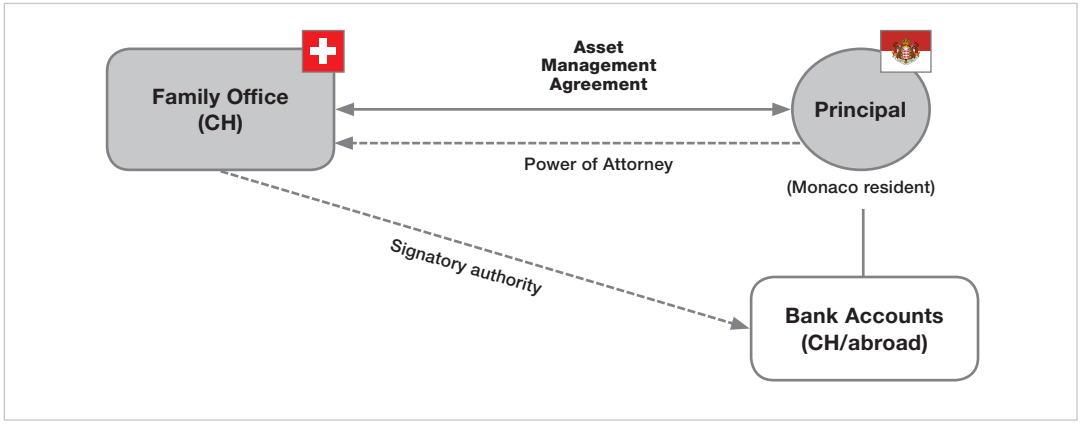
Legal assessment

AMLA: The family office is deemed to be a financial intermediary and is therefore subject to the AMLA.[74]

CISA: The family office does not need CISA authorisation provided that it is a member of a recognised industry body and uses a corresponding asset management contract.[75]

Taxes: The family office must declare its profit in Switzerland for tax purposes, and must make sure that the remuneration for the services provided can be shown to be on an arm's length basis. To prevent the trust from being taxed on the grounds that it is managed in Switzerland, some substance is necessary at the domicile of the trustee.[76] The family office is then deemed to be a securities trader for the purposes of stamp duty.[77] The principal is liable to neither income nor wealth tax.

2 Family Office as Asset Manager for a Natural Person



A single family office domiciled in Switzerland concludes an asset management contract directly with the principal, i.e. a natural person resident in Switzerland or abroad. The asset management contract gives the family office the power to manage specific assets of the principal and to dispose over them as part of the asset management. Restrictions on the investments that may be made affect the internal relationship between the family office and the principal. A safe custody agreement

74 See also Section III lit. B above.
75 See also Section III lit. E above.
76 See also Section IV lit. A para. 8 above.
77 See also Section IV lit. A para. 7 above.

exists between the bank and the principal, and a current account may be held there as well. As a result, the single family office holds an administrative power of attorney as against the bank.[78] The principal has a right of disposition or instruction against the bank.

Legal assessment

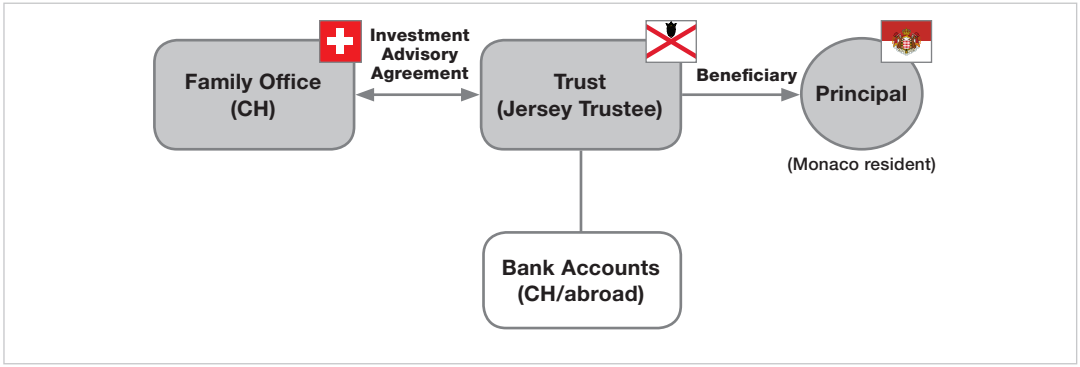
AMLA: The family office is deemed to be a financial intermediary and is therefore subject to the AMLA.[79]

CISA: The family office does not need CISA authorisation provided that it is a member of a recognised industry body and uses a corresponding asset management contract.[80]

Taxes: The family office must declare its profit in Switzerland for tax, and must make sure that the remuneration for the services provided can be shown to be on an arm's length basis. The family office is then deemed to be a securities trader for the purposes of securities transfer tax.[81] The principal is liable to neither income nor wealth tax. From a Swiss point of view, it is important to prove that the principal is in fact resident in Monaco, as no double taxation convention exists between Switzerland and Monaco and otherwise there may be a risk of double taxation.

B Investment Advice

1 Family Office as Investment Adviser for a Trust/Foundation



78 This power of attorney is usually governed by the law of the domicile of the bank. It can be restricted so that the family office can only carry out investments without having the power to purchase or dispose of assets.
79 See also Section III lit. B above.
80 See also Section III lit. E above.
81 See also Section IV lit. A para. 7 above.

Unlike the structures outlined in Section V lit. A above, in which the family office carries out the investments, the family office may, and is only allowed to, act in an advisory capacity. The investments are actually made by the asset owners, i.e. in the case above by the trustee of a Jersey trust. An investment advisory agreement exists between the family office and the asset owner. The trustee decides whether and under what conditions investments are made. As a rule, no legal relations exist between the bank and the family office, but the family office can be granted information rights. The family office is then give information about the investments so that it can monitor the transactions and prepare reports.

Legal assessment

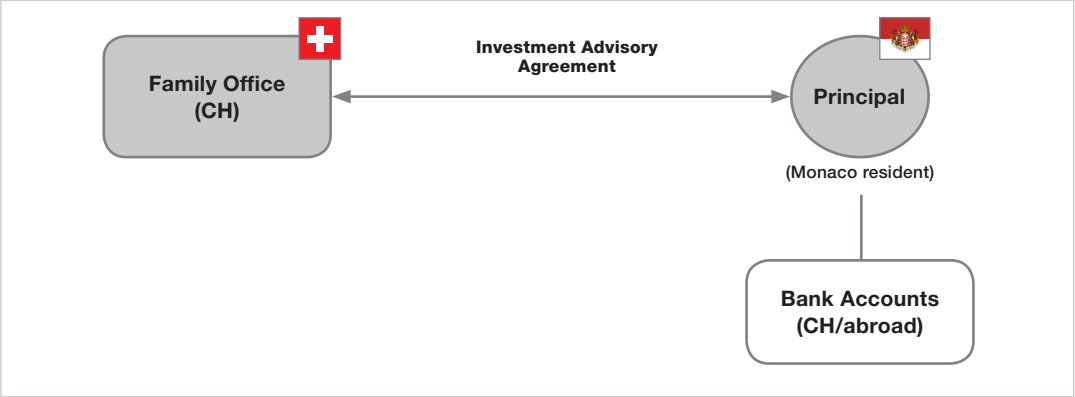
AMLA: The family office does not qualify as a financial intermediary and is therefore not subject to the AMLA.

CISA: The family office does not need CISA authorisation provided that it is a member of a recognised industry body and uses a corresponding investment advisory contract. If not, a check must be made to see whether there is an applicable exemption, i.e. especially whether one can "look through" the trust to the principal, or whether the (corporate) trustee can be deemed to be a company with a professional treasury operation.[82]

Taxes: The family office charges its costs to the trustee under market conditions, which ideally should be agreed with the tax authorities as part of a cost-plus ruling. The requirements for substance at the domicile of the trustee are less for this structure than for the management of assets by a Swiss single family office. The family office is usually not to be deemed to be a securities trader for stamp duty purposes. The principal is liable to neither income nor wealth tax.

82 See also Section III lit. E above.

2 Family Office as Investment Adviser for a Natural Person



In this instance as well, the family office may, and is only allowed, to act in an advisory capacity. The investments are transacted by the asset owner, i.e. the principal. An investment advisory agreement exists between the family office and the principal. The principal decides whether and under what conditions investments are made. A several, no legal relationship exists between the bank and the family office, but the family office can be granted information rights. The family office is then given information about the investments so that it can monitor the transactions and prepare reports.

Legal assessment

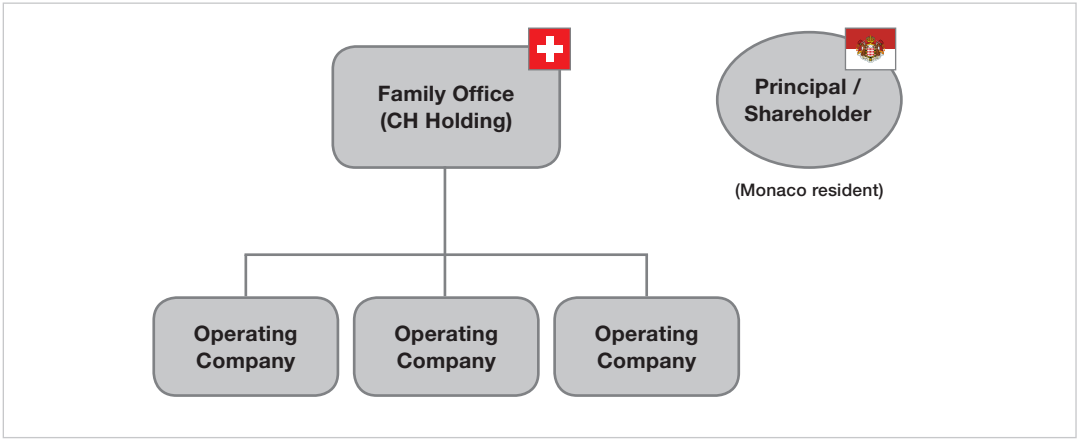
AMLA: The family office does not qualify to be regarded as a financial intermediary and is therefore not subject to the AMLA.

CISA: The family office does not need CISA authorisation provided that it is a member of a recognised industry body and uses a corresponding investment advisory contract. If not, a check must be made to see whether there is an applicable exemption, i.e. especially whether the principal can be deemed to be a high-net worth individual and therefore a qualified investor.[83]

Taxes: The family office charges its costs directly to the principal under market conditions, which ideally should be agreed with the tax authorities as part of a cost-plus ruling. The family office is usually not to be deemed to be a securities trader for stamp duty purposes. The principal is liable to neither income nor wealth tax.

83 See also Section III lit. E above.

C Holding Company with an Integrated Family Office



With this structure, the asset owner is a Swiss company limited by shares (holding company), which holds investments in other companies. The holding company manages the investments, and the persons responsible for the asset management and investment advice are employed directly by the holding company. If the subsidiary companies have relationships with banks, the holding company can usually dispose over the corresponding assets by means of appropriate powers of attorney.

Legal assessment

AMLA: As a holding company, a family office is not subject to the AMLA.[84]

CISA: The family office does not need CISA authorisation.

Taxes: Profits of the holding company are subject to the normal profits tax at Federal level (holding deduction for purposes of direct federal tax).

Dividend distributions to the principal are subject to Swiss withholding tax. If the principal is resident abroad, the withholding tax can only be refunded in whole or in part if a relevant double taxation treaty exists. The holding company is deemed to be a securities trader for stamp duty purposes if its balance sheet shows taxable securities exceeding a value of

84 See the FINMA circular 2011/1, margin no. 108.

10m Swiss francs.[85] The principal pays tax on their private income and assets irrespective of the holding company. If the private and business assets are mixed, the tax authorities may lift the corporate veil.

VI Summary

There are many possible ways of setting up a family office, and the structures described above only represent part of these possibilities. Which structure is to be preferred in any individual case can only be judged on the basis of the specific circumstances.

A Swiss family office is subject to the provisions of the AMLA if it is able to dispose directly over the assets of a third party, i.e. of the principal, a trustee, or a foundation or an (offshore) company. In these cases, joining a recognised industry body is advisable in addition to the compulsory membership of a FINMA-recognised SRO.

In the light of the provisions of the current CISA, (voluntary) membership of an SRO and joining a recognised industry body are also advisable under some circumstances for family offices that only undertake investment advice.

From a tax law perspective, it should be noted that sufficient substance should exist abroad if a Swiss single family office provides services for foreign organisations. If not there is a risk that the entire organisation will be deemed in fact to be managed in Switzerland for tax purposes.

In international arrangements (principal resident abroad, foreign offshore organisations), it is then important to consider the withholding tax and whether it can be refunded when planning the family office structure.

85 See also Section IV lit. A para. 7 above.

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Daniel Bader provides national and international tax and legal advice to individuals and corporate clients.

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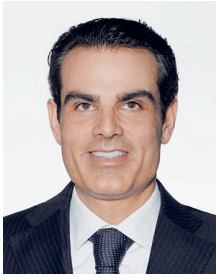

Andreas J. Bär advises private clients, families, single and multi-family offices as well as their professional advisers and agents (such as banks, lawyers, etc.) in all aspects of domestic and international wealth planning as well as commercial and regulatory matters.

Based on his experience, he has been asked to serve on the board of directors as well as on the investments committees of several single and multi-family offices.

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