Should you start a new company or simply buy an existing one?

If you want to set up a company in Switzerland, you'll need to know how the process works, from finding a bank that agrees to open the necessary accounts to the role of the notary and all the documents you have to sign. Once you've opened your bank account, the process is relatively fast, normally about two to three weeks. However, some people – who may be in a hurry, or because their accountant, lawyer or advisor suggest it – decide instead to purchase a company that already exists but is no longer operational. In other words, a dormant company.

Buying a company that already exists can certainly save you time: you just need to draw up a contract with the seller. And people are quite often prepared to sell their shares for a very low price, in some cases one symbolic franc. In addition, you will most likely have to pay the go-between's fee for finding the company for you.

This article does not present an exhaustive list of the pros and cons of the various options but instead will alert you to some of the risks involved in buying a dormant company.

Unlike a company that you set up yourself, the company you acquire will have a history. Are you familiar with it? Are you sure the company has a clean legal slate, and that there are no ongoing or potential future disputes? Legal disputes can sometimes arise several years after the fact, since the statute of limitations often stands at five or even ten years. And so even though you didn't own the company at the time, you've inherited its problems and will have to face the consequences – financial in the best case and criminal in the worst. I don't think any lawyer would disagree with me if I said that a contract between a buyer and seller is only truly effective if it is entered into between people acting in good faith. If that's not the case, the seller is unlikely to cough up any money later on; your only other option would be to sue the seller, something that would take a lot of time and money and not necessarily end in your favor. I once had a client who purchased a dormant company only to have the company accounts blocked by the bank, which did not want to work with him as the company's new shareholder. It took him several months to find a willing bank. When you start a company from scratch, on the other hand, your bank will carry out all its due diligence before you get started. And so once your new company is listed in the trade register, everything is sorted out and you can focus on your business.

When buying a dormant company, you will also need to consider the tax implications. The tax authorities do not like it when the majority of the shares of a company that is no longer active and whose only assets are the company bank account – consisting of cash or short-term investments – is sold for a token amount. It will treat the company as if it had been formally liquidated and created from scratch. I will discuss the consequences of this further down.

Since the tax office doesn't know who the company's shareholders are – at least for a corporation (i.e., a *société anonyme* in French or *Aktiengesellschaft* in German) – it relies on other clues in order to detect a change in ownership, such as a new corporate purpose, a new name or changes within the board of directors. And don't forget that the tax office has a look at the company's financials at least once a year, so it will know if it has ceased operating.

When you buy a dormant company in Switzerland, it is generally in one of two scenarios: it has an accumulated loss, which is offset on the liability side of the balance sheet by past contributions from

the shareholder (seller); or it has profits and reserves, which are matched on the asset side by cash or (in many cases) a negative company bank account balance.

In the scenario of an accumulated loss, the buyer might expect to benefit from the tax impact of losses carried forward, given that past-year losses can be deducted from future profits to reduce a company's tax bill. Under Swiss tax law, losses from the previous seven years can be set off against future profits, which means that the owner can make tax-free profits until the past losses have been used up.

ASSETS		**LIABILITIES**	
		Share capital	CHF 300,000
		Losses carried forward	– CHF 300,000
Total	CHF 0.00	Total	CHF 0

Yet when a dormant company is sold, the tax office does not recognize losses carried forward. As a result, not only will the normal corporate income tax apply to future profits (regardless of any past losses on the balance sheet), but these profits will also be treated as dividends received by the new shareholder(s) and subject to personal income tax as well. Depending on the amounts in question, the tax bill could be significant (even though the Swiss tax on returns on equity holdings is low if you own at least 10% of the company's share capital).

In the second scenario, retained earnings are commonly offset on the asset side by cash or a loan to one or more shareholders. Here's how the balance sheet might look:

ASSETS		LIABILITIES	
Due from banks/Loan to shareholder(s)	CHF 300,000	Share capital	CHF 100,000
		Retained earnings	CHF 200,000
Total	CHF 300,000	Total	CHF 300,000

In this scenario, the tax office will treat the purchase of a dormant company as if the company had been liquidated and started anew. This means the seller will be taxed on the retained earnings as if they had been fully distributed as a dividend at the time of sale. This is a tax rule; under Swiss accounting law, however, the earnings are not considered to have been distributed. This means there is nothing to stop the tax office from taxing the retained earnings again if they are in fact distributed at a later date. All this is theoretical, of course, based on Swiss tax law. In reality, you may be able to come to an agreement with the tax office in order to avoid the retained earnings from being taxed twice.

Conclusion

Buying a dormant company with a bank account can allow you to get your business up and running quickly while avoiding the costs – mainly notary fees – associated with starting up a company. It can help you save time and money.

Setting up a company the normal way, through a notary, takes a little longer and means you have to find a bank that's willing to work with you. Yet you will then own a company with a clean slate – free of any potential legal, tax or bank-related problems. It may take longer and cost more, but you'll sleep better!