

# NPOs in Switzerland – a High Level Overview

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## 1. Switzerland – a hub for NPOs

Switzerland is a place of choice for setting-up non-profit organizations (NPO). With over 13'500 foundations holding funds of more than CHF 100 billion and estimated 100'000 associations, Switzerland is a global leader in the NPO sector.

## 2. Types of Swiss NPOs

Swiss NPOs are typically setup as foundations (*Stiftung*) or associations (*Verein*). While LLCs (*GmbH*) or stock corporations (*Aktiengesellschaft*) can also be structured as NPOs, they are less common as it is generally more difficult to attract donations than via foundations or associations.

- a) The foundation: A foundation is incorporated and provided with (initial minimum) capital by one or several founders to pursue a specific charitable purpose set out in the articles. The foundation has no members or shareholders, but only beneficiaries and acts independently from its founder(s) – only dedicated to the pursuit of its purpose. The foundation board is the governing body who has the overall responsibility for the foundation, its assets (and the management thereof) as well as compliance with the foundation's purpose. Once a foundation is established, its articles and purpose may only be altered for very limited reasons. Similarly, assets donated to a foundation may not be returned to the founder or donor but may only be used in the pursuit of the foundation's purpose. While this strict legal framework makes foundations rather inflexible, it also provides Swiss foundations with a high level of credibility in Switzerland and abroad.
- b) The association: Associations enjoy great popularity in Switzerland. In general, they can be founded with little formal requirements by its members (natural persons and/or legal entities) in pursuit of any given purpose. The members are very flexible in how the association is organized and also can easily change the association's purpose. In contrast to the foundation, there is no minimum capital or – with few exceptions according to the Swiss Anti Money Laundering Act – entry into the commercial register needed for setting-up an association.

## 3. Charitable purpose / tax exemption

The key question for a NPO in Switzerland is whether it is regarded as charitable (*gemeinnützig*) from a Swiss tax perspective and thus is tax-exempt. Without tax exemption, donations made to a NPO are subject to gift tax (*Schenkungssteuer*), while the donation is not tax deductible for the Swiss resident donor. Thus, it will generally be very difficult for a Swiss NPO to attract funding from Swiss donors without being tax-exempt.

Therefore, NPO founders should obtain a tax ruling before incorporation to ensure the intended purpose of the NPO and its articles comply with the applicable guidelines on tax exemption.

For a NPO to be tax-exempt, it must exclusively pursue a charitable purpose (*gemeinnütziger Zweck*) in an "altruistic manner". According to the Swiss tax authorities' long standing practice, a purpose is charitable if it is in the "general interest and worth promoting". This includes in particular activities in humanitarian, healthcare, environmental, educational, scientific and cultural areas. Furthermore, the scope of the NPO's beneficiaries must be sufficiently broad, as a NPO may not simply be a "self-help organisation", e.g. a foundation providing financial assistance only to the founder's family would not be regarded as charitable from a tax perspective.

In addition to the above criteria, the Swiss tax authorities require that the activities of a Swiss NPO only extend to Switzerland and/or developing countries, but not to other industrialised nations, i.e. a Swiss NPO using all or a substantial part of its funds e.g. in Germany will risk losing its Swiss tax exemption.

Finally, several Cantonal tax authorities restrict the compensation for NPO board members, essentially limiting their compensation to the reimbursement of expenses. However, the executive management and other employees of a NPO may receive fair compensation.

#### **4. Supervision of NPOs**

As per mandatory law, foundations are supervised by a state authority to ensure that the foundation's funds are used in accordance with its purpose. To this effect, the foundation is required to regularly submit its financial statements for review by the supervising authority. Depending on the foundation's geographical scope of activity, either the Federal Supervisory Authority for Foundations (ESA) or a Cantonal authority is responsible for the supervision.

#### **5. International Aspects**

While charitable causes often have a global angle (in particular environmental causes), there are no international treaties which would facilitate donations across state borders. On the contrary, most tax authorities take a domestic view and do not exempt donations to foreign NPOs from tax.

As a result, Swiss-based NPOs are generally not attractive for foreign donors, while it is also not efficient for Swiss residents to donate to charities based abroad. There are different approaches to address this issue, but so far there is no one-fits-all solution, thus requiring an individual solution to be found for NPOs wishing to operate internationally.

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