The Use of a Swiss Trustee: How and Why?

A trust is a very flexible instrument and is particularly useful when a Swiss Trustee is appointed, due to the tax advantages available.

21st January 2019

The Dixcart office in Switzerland is a member of the Swiss Association of Trust Companies (SATC) and is registered with the Association Romande des Intermediaires Financiers in Switzerland (ARIF). We advise on how to structure wealth in Switzerland, the use of Swiss Trustees, Trusts and Private Trust Companies, and matters relating to family governance, donation and succession.

Switzerland and the Use of Trusts

Switzerland does not have specific Trust Law, but recognised trusts with the ratification of The Hague Convention on the Law Applicable to Trusts (1985) on 1 July 2007.

Whilst there is no domestic law governing trusts in Switzerland, trusts from other jurisdictions, and their specific rules, are recognised and can be administered in Switzerland.

In Switzerland the Settlor (the individual who settles assets into the trust for the benefit of the Beneficiaries) can choose the law of any specified trust jurisdiction to govern the trust. For example a Guernsey trust can be established with a Swiss Trustee. The Trustee holds and manages the assets in the trust on behalf of the Beneficiaries.

Why Use a Trust?

A trust is a very flexible instrument and is particularly useful for estate planning, wealth management and asset protection.

At a basic level, the concept of a trust is relatively simple: the Settlor places assets in the legal custody of another (Trustee), who holds the assets for the benefit of a third party (Beneficiary). The trust is not a separate legal entity, but more of a legal obligation agreed between two parties: the Settlor and the Trustee.

Trustees owe a fiduciary duty to both the Settlor and the Beneficiaries, as well as to the trust itself. Depending on the jurisdiction under whose laws the trust is constituted, the trust can either have a pre-determined life span or be indefinite. Trusts are intrinsically very flexible.

Why use a Swiss Trustee?

There are a number of reasons why use of a Swiss Trustee can be advantageous:

- Swiss economic, political and legal stability provides a solid base for the provision of local administration services.

- Switzerland has a number of favourable and well developed banking laws, and has been a popular international private banking centre for many years. It is a jurisdiction with a good reputation and offers a high quality of knowledgeable professionals working within asset management, tax planning and private banking.

- Switzerland has a well deserved reputation for discreet professional support when managing the affairs of wealthy private individuals.

- Switzerland is located in the centre of Europe where many affluent individuals are based. Swiss Trustees therefore offer the advantage of being able to provide frequent and high quality support as they can regularly meet appropriate clients in Switzerland.

Taxation of Trusts in Switzerland

The Hague Convention (Article. 19) stipulates that the Convention does not prejudice the powers of sovereign states in fiscal matters. Consequently Switzerland has maintained its sovereignty in relation to the tax treatment of trusts.

The tax advantages available in using a trust with a Swiss Trustee essentially depend on the tax residence of the Settlor and the Beneficiaries.

In terms of Swiss Law:

- A Swiss resident Trustee is not liable to Swiss income tax or capital gains tax on the assets held under management in a trust.

- Settlors and Beneficiaries are exempt from Swiss taxation as long as they are not considered to be Swiss residents.

Regulation of Swiss Trustees

Swiss Trustees have to be registered as financial intermediaries in accordance with Swiss Anti Money Laundering Law. They can be registered with the Central Regulatory Authority or with a self-regulatory organisation (SRO), which must be recognised by the Swiss Federal State.

Annual Accounts

The Swiss Association of Trust Companies (SATC) provides in its Code of Ethics and Business Conduct that: “A Member must keep adequate, suitably detailed and orderly records for each trust. A Member must ensure that records are maintained for an appropriate number of years.”

Protection

Under Common Law the Trustee is the owner of the assets and is required to administer the trust assets separately from his own assets. In the event of death or bankruptcy of the Trustee, the assets are not considered as belonging to the Trustee but are submitted to the trust’s protection and held separately for the Beneficiaries. The trust’s assets are therefore segregated from the Trustee’s estate.

Confidentiality in Switzerland

Switzerland is well known for its commitment to banking services, professional confidentiality and commercial competence.

SATC provides that: “Any and all information related to a trusteeship and acquired by a Member must be kept strictly confidential by the Member, its directors, officers and other employees.”

A breach of confidentiality, whether professional or commercial, would only be permitted by law in the event of criminal liability.

Summary

An English, Guernsey, Isle of Man or Maltese Law based trust with Swiss Trustees can offer a number of tax efficiencies as well as advantages in terms of wealth preservation and confidentiality. Dixcart can establish and manage such trust structures.

Additional Information

If you would like more information on this subject please speak to Christine Breitler at the Dixcart office in Geneva: advice.switzerland@dixcart.com or to your usual Dixcart contact.

Please also see our Trusts and Foundations page for further information.

Dixcart Trustees (Switzerland) SA is a member of SATC and registered with ARIF Switzerland