

# **Your Company in Switzerland and Europe**

## **Legal and Tax Aspects, News and Advantages**

Presentation at the Chileno-Suiza  
Chamber of Commerce  
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# Overview

- I. General Aspects Switzerland and Europe
- II. Legal Systems
- III. Tax Systems
- IV. Case Studies on International Structures

# I. General Aspects Switzerland

## Switzerland

- Neutral
- Democratic
- Constitutional Federation
- Located in the Heart of Europe
- 26 Cantons, local authorities
- Federal Authorities

# I. General Aspects Europe

## Europe

Most important European Countries:

- UK
- Germany
- France
- Spain
- Italy
- Benelux

All democratic, some have political difficulties, but more or less stable economies

## II. Legal Systems / Switzerland

### Switzerland

- Swiss Constitution  
(1291 / 1848 / 2000)
- Federal Law / Cantonal Law
- Swiss Federal Supreme Court / District and Cantonal Courts
- International Arbitration
  - Important and frequently used
  - Clear rules / English as the common Language
  - Limited Challenges of Arbitral Awards

## II. Legal Systems / Switzerland

- Swiss Code of Obligations
  - Contract Law
  - Commercial Law
  - High degree of Flexibility
- Corporate Law
- Partnerships
- Legal Entities
  - Stock Corporation ("AG" / "SA")
  - Limited Liability Company ("GmbH" / "Sarl")
    - Unlimited Duration
    - No Liability for the Owner
    - Auditing-Opting for small Companies
    - Need of one Swiss Resident

## II. Legal Systems / Switzerland

- Easy to incorporate
- Minimal Capital
  - CHF 20'000 (GmbH)
  - CHF 100'000 (AG)
- In most Cases possible on Proxy Basis
- Ownership of shares can be secret (not to the banks)
- Location can be chosen and changed
- Employment Law
  - Very flexible Labour-Regulations ("Hire and Fire")
  - No statutory minimum wages
  - Relatively high salaries, but low additional payroll costs
  - High working hours
  - Low absenteeism rate

## II. Legal Systems / Switzerland

- Residence and Work Permits
  - No permits for EU citizens necessary
  - Non-EU citizens: Work permits possible, but not easy to get
  - Permits for Residence without gainful employment
- Bilateral Agreements with the EU
- Switzerland is not an EU member
- But: Agreement with the EU gets us very close
  - Freedom of Movement and Residence
  - Air and Land Transport
  - Fight against Fraud
  - Taxation of Savings and Banking Secrecy

## II. Legal Systems / Switzerland

- Agreement on Free Trade  
(Chile-Switzerland)
  - Signed in 2004
  - Leverages Trade almost without Barriers

## II. Legal Systems / Switzerland

- Banking Secrecy
  - For Swiss and Foreigners
  - Restrictions:
    - Administrative Law (Supervision by Authorities)
    - Civil Proceedings if Bank is obliged to give Testimony
    - Criminal Investigation
  - No Cancellation by Bilateral Agreements with EU
  - No Change since UBS cause

## II. Legal Systems / Europe

### Europe

- Most European Countries are very similar
  - Different Political Systems
  - Very similar Legal Systems
  - Some Countries are unpredictable regarding changes on the Legal System
  - Corporate Law: very similar Entities
  - Employment Law: most Countries: strong Unions, no “hire and fire”
  - Residence and Work Permits: no Limits within EU for EU Citizens
  - Banking Secrecy: similar to Switzerland, some weaker Systems

## III. Tax Systems / Switzerland

### Switzerland

#### Taxation of Businesses (Corporate Tax)

- Subject to unlimited Taxation
  - Incorporated in Switzerland
  - Central Place of Management in Switzerland
- Subject to limited Taxation
  - Swiss Real Estate
  - Swiss PE

## III. Tax Systems / Switzerland

### Exemption System

- Exemption for foreign PE's
- Participation Exemption (for Dividends and Capital Gains)
- No Group Taxation

### III. Tax Systems / Switzerland

#### Effective Tax Rates, incl. Federal Income Tax (2009)

Canton, Community	Total effective tax rate
Zug, Zug	15.84%
Zurich, Zurich	21.45%
Obwalden, Sarnen	12.66%
Nidwalden, Hergiswil	16.14%
Lucerne, Lucerne	12.5% (as of 2011)
Appenzell, Herisau	12.79%
Geneva, Geneva	24.23%

## III. Tax Systems / Switzerland

### Dividend / Interest Withholding Tax

- Federal Withholding Tax
  - In Principle, 35% on Dividends and Interest paid on “Bonds”
  - But exempt/reduced by Application of
    - Double Taxation Conventions (CH has approx. 70)
    - EC Parent-Subsidiary Directive
    - EC Interest and Royalties Directive
  - No withholding on Group Financing and Royalties
  - No Branch Remittance Tax

## III. Tax Systems / Switzerland

### Stamp Taxes

- Federal Issuance Stamp Tax
  - 1% on Share Capital and Surplus exceeding CHF 1 million
  - Exemptions for (de-)mergers, merger-like Transactions and Transfers of Domicile from abroad into Switzerland
  - No Tax on Capital allotted to a Swiss Branch of a foreign Company
  - 0.12% / 0.06% on Issuance of "Bonds"

## III. Tax Systems / Switzerland

### Stamp Taxes

- Federal Transfer Stamp Tax
  - 0.15% for Swiss Securities
  - 0.3% for foreign Securities
  - Tax is due only if a Swiss Security Dealer is involved in Transaction
  - Various Exemptions
- Federal Stamp Tax on Insurance Premiums
  - 5.0% on Net Cash Premium
  - Various Exemptions

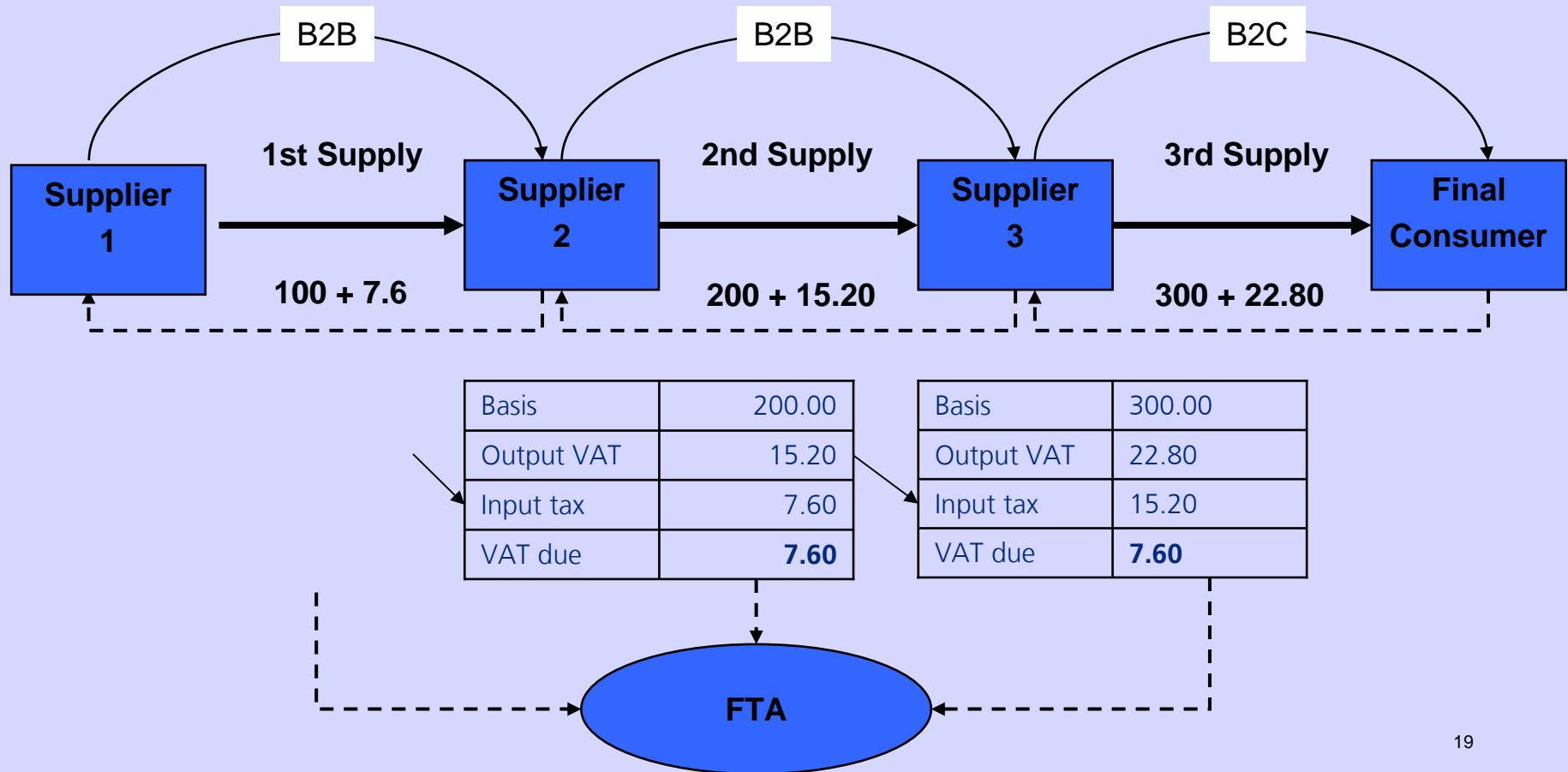
## III. Tax Systems / Switzerland

### Value Added Tax

- Standard Rate
  - 7.6%
- Similarities to EU Systems
  - With substantial Deviations
- Object of Taxation
  - Supply of Goods within Swiss Territory
  - Supply of Services within Swiss Territory
  - Self-supply within Swiss Territory
  - Receipt of Services from foreign Enterprises

# III. Tax Systems / Switzerland

## Value Added Tax



## III. Tax Systems / Switzerland

### Tax Holidays

- Swiss Companies can apply for up to 10 Years Tax Holidays in certain (undeveloped) Areas, if certain Conditions are fulfilled

### Swiss Tax Ruling Practice

- Very fast and flexible Tax Ruling Practice in all Areas of Tax Law and on all Levels

### Treaty Chile-Switzerland

- Signed, but not yet in Force (expected 2010 or 2011)

## III. Tax Systems / Europe

### Europe

- Corporate Income Tax Rates 2008

UK	26.2%
Germany	25.4%
Spain	26.9%
France	31.6%
Italy	28.7%
Ireland	20.1%

- European Tax Systems

- Some are unpredictable (e.g. Germany)
- Changes with retroactive effect

## IV. Case Studies (1)

### Case Study 1: Swiss Holding Company

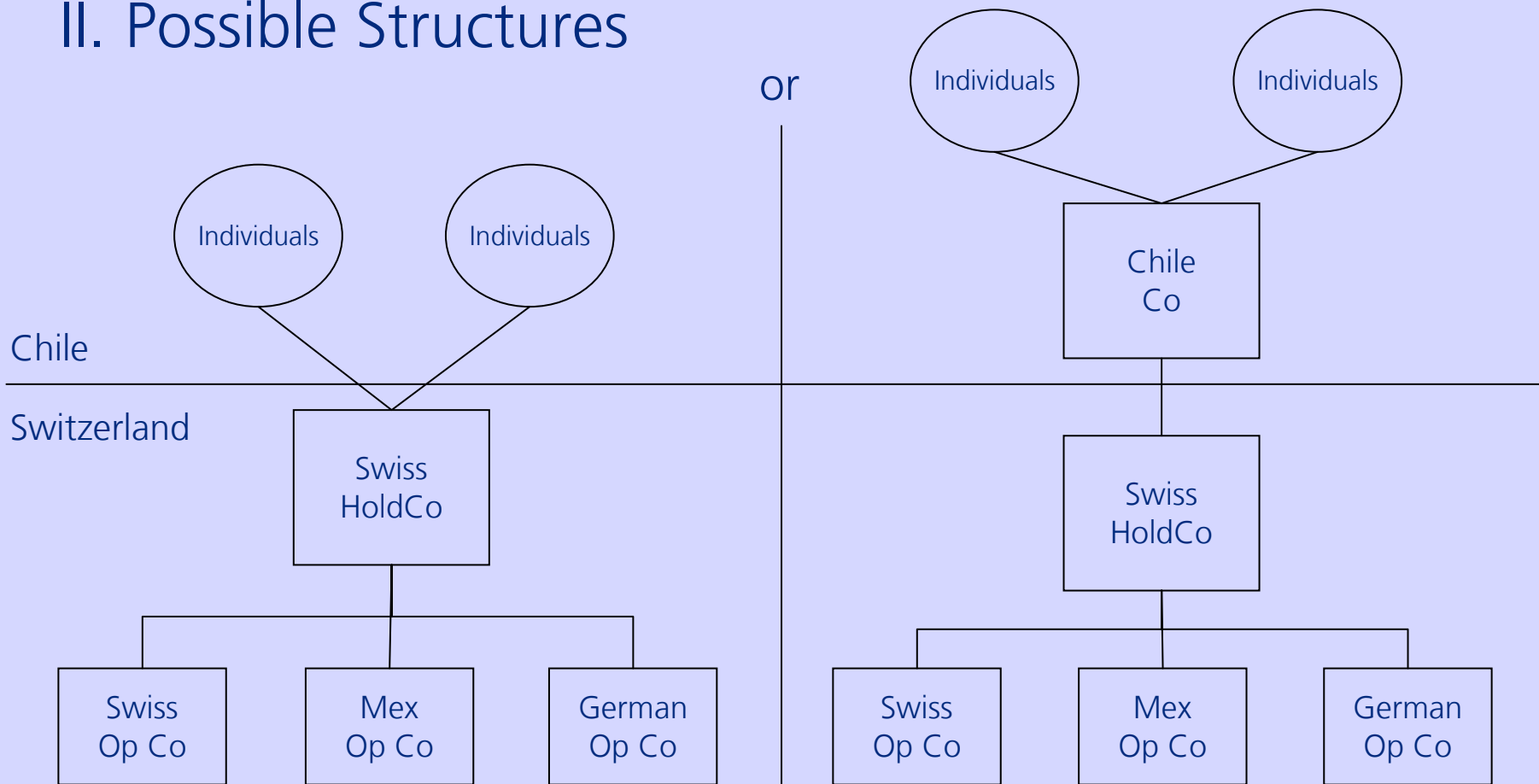
#### I. Facts

Chilean private or corporate shareholders would like to set up a European Holding structure, in order to

- Centralize Holding Functions
- Centralize Financing / IP / etc.
- Protect Assets
- Reduce Tax Burden

# IV. Case Studies (1)

## II. Possible Structures



## IV. Case Studies (1)

### III. Corporate and General Issues

- Incorporation with Cash or as Contribution in kind or intended taking over of assets
- No Restrictions for Investments and for Exit
- No physical Presence required for Swiss Purposes

## IV. Case Studies (1)

### IV. Tax Issues

- Incorporation might be Subject to the 1% Stamp Duty, but not in Case of Reorganization
- Holding Privilege: Dividends and Capital Gains almost Tax free
- Holding can serve as Finance Vehicle
- Dividends to Chile: 15% w/h Tax

## IV. Case Studies (2)

### Case Study 2: Swiss Sales Company

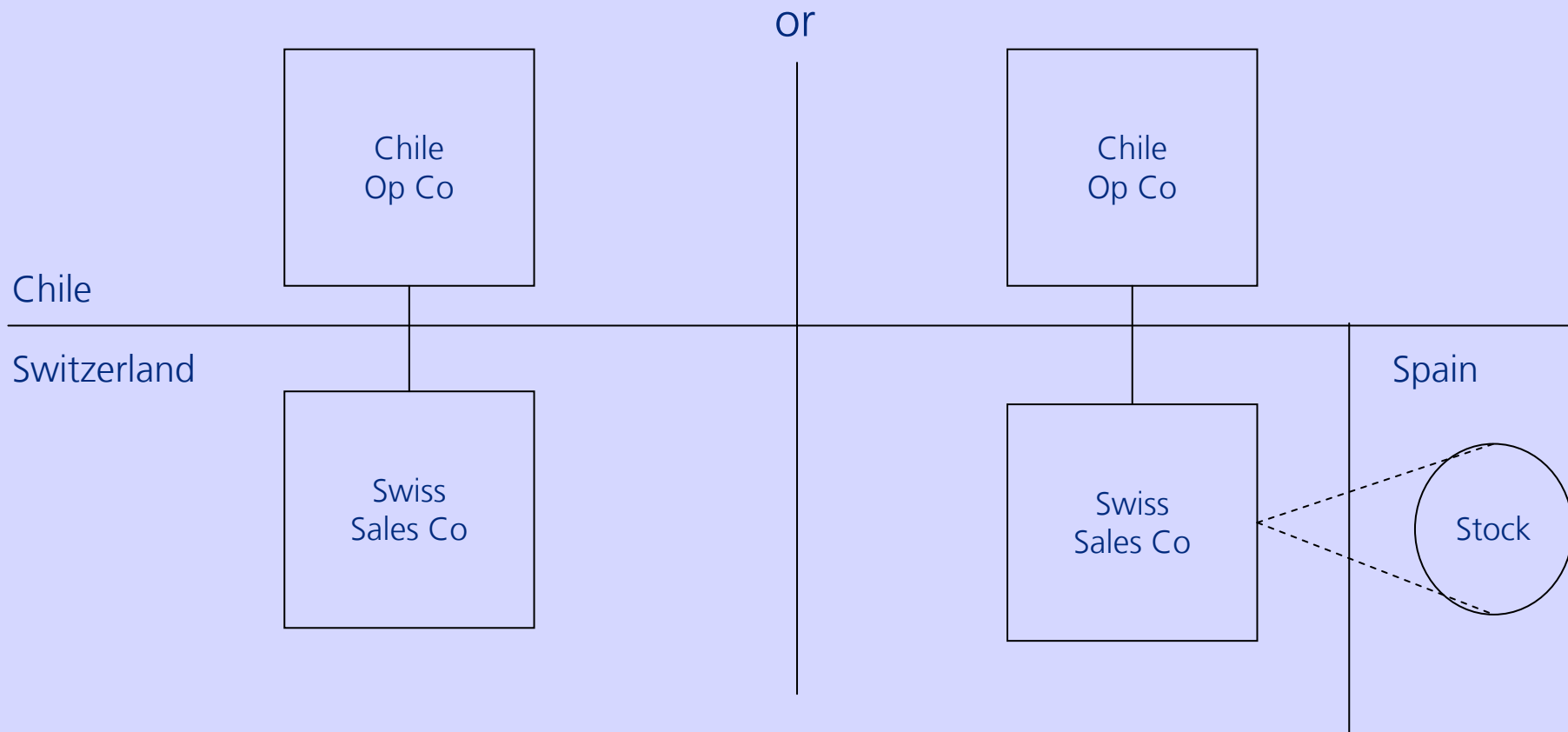
#### I. Facts

Chilean private or corporate shareholders would like to set up an European Sales Company, in order to

- Centralize European Sales
- Switch from a Sales Agent Structure to a centralized Structure
- Reduce Tax Burden

## IV. Case Studies (2)

### II. Possible Structures



## IV. Case Studies (2)

### III. Corporate and General Issues

- Easy set-up of SwissCo / Spanish Warehouse
- Agreements with other Group Companies / dependent or independent Distributors can be in Switzerland
- Many Services can be outsourced
- No special Substance required

## IV. Case Studies (2)

### IV. Tax Issues

- Set-up of SwissCo Tax free
- If at least 80% of SwissCo's income is foreign sourced: Swiss Tax Privileges
- Spanish Warehouse is no permanent Establishment under Swiss/Spanish Double Tax Treaty
- CH-Chilean treaty shall in the future apply for CH-Dividends (15% CH w/h tax)

## IV. Case Studies (3)

### Case Study 3: European / Swiss Structure

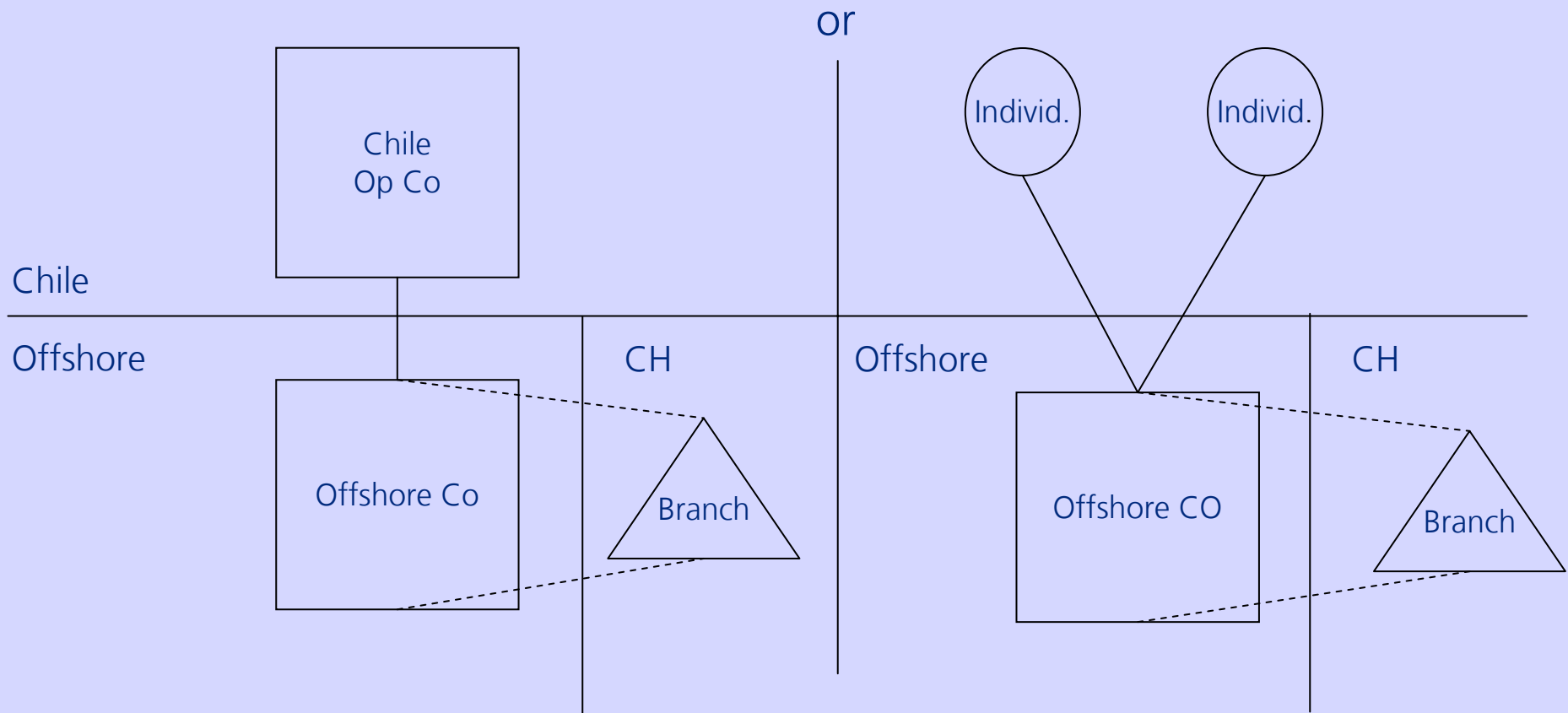
#### I. Facts

Chilean private or corporate shareholders would like to set up an European Sales Company, in order to

- Centralize European Sales
- Switch from a Sales Agent Structure to a centralized Structure
- Reduce Tax Burden

## IV. Case Studies (3)

### II. Possible Structures



## IV. Case Studies (3)

### III. Corporate and General Issues

- Easy to set-up Offshore Co
- Relatively easy to set-up Swiss Branch (Substance required)
- Swiss Branch operates as the European Sales Office
- Services can be outsourced (Bookkeeping, Legal and Tax Advice etc.)

## IV. Case Studies (3)

### IV. Tax Issues

- Set-up of Swiss Branch Tax free (no Stamp Duty)
- If at least 80% of Swiss Branch's income is foreign sourced: Swiss Tax Privilege  
Tax Rates: between 10 – 12%, depending on Location
- No Swiss Withholding Tax
- No Swiss Branch Profit Remittance Tax

## IV. Case Studies (4)

### Case Study 4: Swiss IP-Company

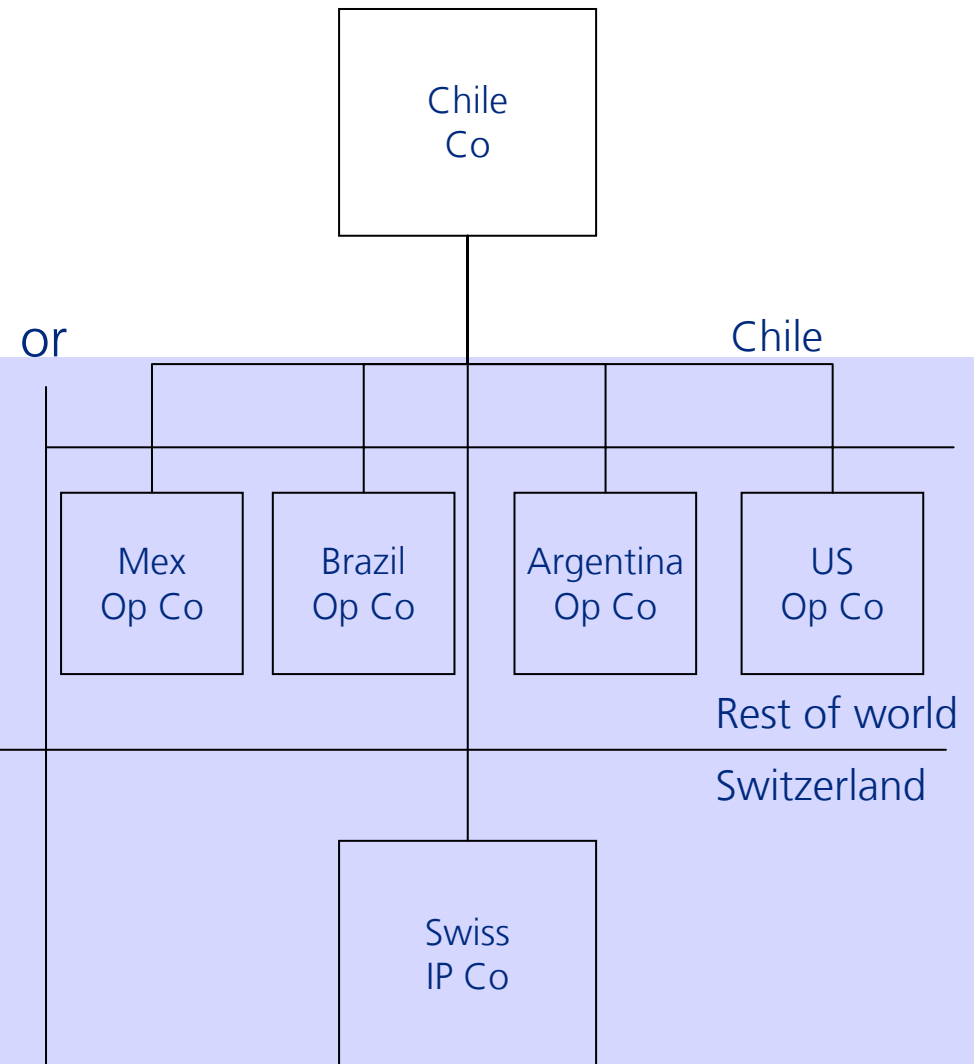
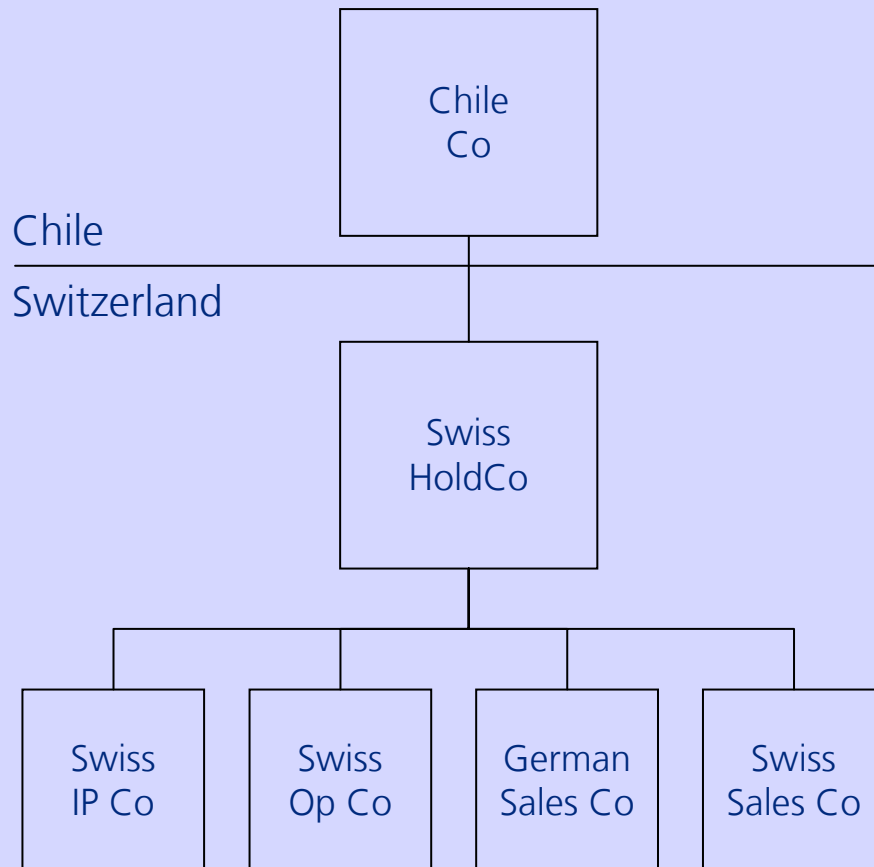
#### I. Facts

Chilean private or corporate shareholders would like to set up an European IP-Company, in order to

- Centralize all IP rights
- Protection of IP rights
- Separation from operational Risks
- Benefit from international Registration Systems
- Reduce Tax Burden

# IV. Case Studies (4)

## II. Possible Structures



## IV. Case Studies (4)

### III. Corporate and General Issues

- IP Rights as Contribution in kind to Swiss IP Co
- Structure similar to Holding Structure
- Switzerland being Part of international IP treaties
- Licence Agreements / Royalty Stream
- Cost Considerations

## IV. Case Studies (4)

### IV. Tax Issues

- Swiss IP Co benefits from special Tax Status, if 80% foreign sourced Income
- Dividends to Swiss HoldCo almost tax free
- Royalties must be at arms-length, then deductible in ordinary (high) taxed Companies
- Avoidance of Swiss w/h Tax through use of Swiss Branch Structure

## IV. Case Studies (5)

### Case Study 5: Swiss Headquarter Company

#### I. Facts

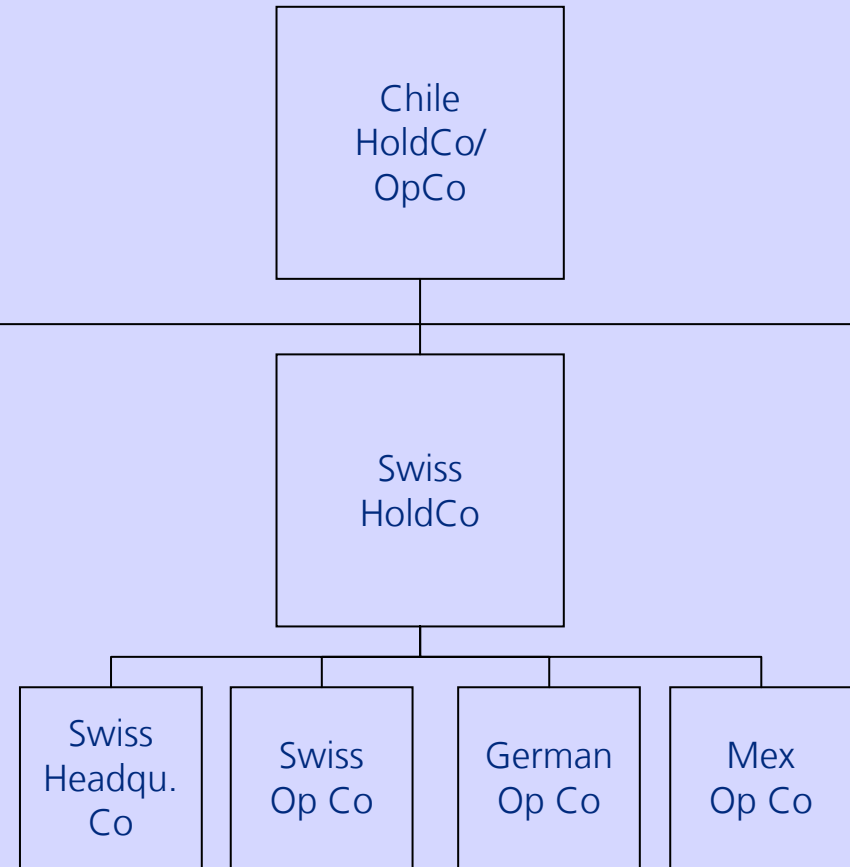
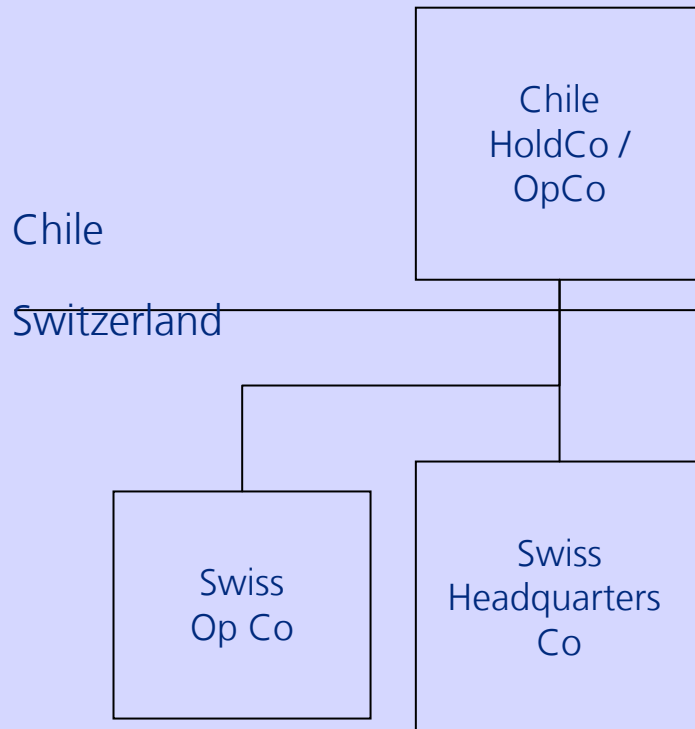
Chilean private or corporate shareholders would like to set up an European Headquarter Company, in order to

- Centralize all European or worldwide Management
- Be in the heart of Europe
- Access to skilled and motivated People
- Reduce Tax Burden of Company and Management

## IV. Case Studies (5)

or

### II. Possible Structures



## IV. Case Studies (5)

### III. Corporate and General Issues

- Attractive Employment Law
- Work Permit Issues
- Real Estate Issues

## IV. Case Studies (5)

### IV. Tax Issues

- Cost plus Taxation of Management Company
- Management relatively low taxed
- Management fees at arms-length in order to be deductible in operative Companies
- Only a few countries know w/h Taxes on Services
- Avoidance of Swiss w/h Tax through use of Swiss Branch Structure

Thank you for your attendance!

**Q & A**

# Your contact for Swiss Legal and Tax Matters

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# See you here in Zurich!

