

## Editorial

*If we look at the structure of the balance sheet of a considerable number of large and medium-sized Swiss businesses, we could call them property companies rather than what they are, in other words, industrial or service companies, given that the property aspect figures large. This is not surprising: until recently, holding property was seen as a sign of security and stability, a reserve or safety net in case of difficulty, for example, deterioration in the economic situation. But habits and economic philosophy evolve, and increasingly certain boards of directors are taking the view that it is not necessarily the role of an industry, for example, to weigh down its balance sheet by owning a factory. True, the crisis of the 1990s in Switzerland, and of 2007 and the following years largely in the USA, reminded us that property values do not necessarily and continually rise.*

*Also, a good grasp of all the facets of a balance sheet makes it clear that, for every property on the active side, on the passive there is usually the need to manage a risk in fluctuation of interest rate. Finally, the discrepancies between historic and current values, as well as the distribution of maintenance expenses among different items in the profit and loss account, often help to blur transparency of the real costs of holding property.*

*It is thus not surprising that divestment of property – particularly through sale and lease-back transactions, which have the advantage of retaining use of the property – have appeared and attracted attention, particularly through a few high-profile cases.*

*Not only does sale and lease-back allow the business to devote more means to its principal activity, but it also allows the business to return cash to its shareholders (who are thus free, in turn, to diversify, including investing in property which they can select according to their own criteria and not those of the company whose shares they hold).*

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## Real-estate sale and lease-back transactions: legal and tax aspects in Switzerland

Today, 69 % of companies carrying out business in Switzerland own the premises in which they operate<sup>1</sup>. However, the main purpose of these companies is often not the holding and management of buildings. They are not always aware of the value of their buildings and might well be better off allocating their financial resources to expansion and consolidation projects directly related to their main activities (acquisition of third-party companies, R&D expenses, Capital Expenditure expenses (CapEx), etc.), rather than keeping real-estate assets on their balance sheet. A real-estate sale and lease-back transaction may in this respect be a useful tool to trigger the swift availability of cash, while allowing the building user to continue using it totally or partially.

### ADVANTAGES OF SALE AND LEASE-BACK FOR THE SELLER:

- Immediate liquidity inflow generated by the sale of buildings, which allows the company to finance other activities
- Improved balance sheet by the replacement of real-estate assets, often appearing below market value, by liquidity
- The seller, in his position as tenant, stays in operational control of the building
- Transfer of risk involved in possession

### ADVANTAGES OF SALE AND LEASE-BACK FOR THE INVESTOR:

- Potential increase in value of real-estate property during the lease agreement
- Possibility of having the tenant bear part of the expenses
- The building gains in value due to the long-term lease contracted with a prime tenant
- Better possibility of being refinanced on the capital market

Sale and lease-back may quite simply be defined as a transaction by which one of the parties sells an asset and becomes the tenant/user of the asset; in other words, it allows the seller to continue using the asset without being its owner. A wide range of assets may be the object of such transactions: aircraft, fleets of cars, machines, and obviously real estate, which is the subject of this publication.

This article will not refer to financial leasing transactions (in particular under International Financial Reporting Standards) whereby the seller of the asset has a repurchase option at a set price or, for accounting purposes, remains the economic owner of the property (and thus under the agreement bears all risks and rewards of the property). Financial leasing is not a common tool in property transactions in Switzerland. We shall thus concentrate on operating leases.

A real-estate sale and lease-back transaction is carried out between a company for which real-estate holding and management is not the main activity (e.g. any commercial, industrial, banking, hotel management company, etc.) and a third party, for instance an institutional investor, a real-estate fund, a foundation, which in turn rents such asset to the seller. Terms and conditions of the lease agreement are negotiated by the parties and are based on the financial costs incurred by the new owner (mortgage charges, charges relating to the building, margin). They also depend on the quality of the building and the long-term capacity of the tenant to pay the rent ("credit rating").

A sale and lease-back type of transaction has obvious advantages for the user (tenant). The balance sheet of the company is improved by the

<sup>1</sup>. CRESS 2009, Corporate Real Estate and Sustainability Survey by CBRE PI Performance and CCRS Center for Corporate Responsibility and Sustainability at the University Zurich