Private client law in Switzerland: overview

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TAXATION

Tax year and payment dates

1. When does the official tax year start and finish in your jurisdiction and what are the tax payment dates/deadlines?

The income and wealth tax system includes three taxation levels:

- The federal tax system, which is common to all taxpayers. There is no wealth tax at the federal level.
- Specific tax systems, in each of the 26 cantons (the federal states of Switzerland).
- The municipal taxes in all Swiss communes (Swiss municipalities are called "communes").

The tax laws in the cantons were harmonised in 1995. However, the cantons still have a large degree of independence, particularly regarding tax rates and the interpretation of the tax laws. This results in significant taxation differences.

The Swiss tax year runs from 1 January to 31 December. The tax payment dates and deadlines vary between the cantons with regard to cantonal and communal taxes. The federal income tax is due on 1 March of the year following the tax year. As the assessable elements are generally not known by this deadline, the taxpayer first receives a provisional tax invoice and subsequently (once the tax return has been filed and tax is finally assessed) a final invoice.

Domicile and residence

2. What concepts determine tax liability in your jurisdiction (for example, domicile and residence)? In what context(s) are they relevant and how do they impact on a taxpayer?

Swiss civil law has concepts of domicile and habitual residence.

Domicile

This is the place where a person resides with the intention of remaining there permanently (*see also below, Residence*).

Residence

In Switzerland, "habitual residence" is the place where a person resides (for example, for a pre-defined period of time) without the intention of remaining there permanently. These concepts are particularly relevant in private international law.

However, for Swiss tax purposes, residence and domicile amount to the same thing. An individual is resident and domiciled in Switzerland for tax purposes if he has both the:

- Intention of remaining there permanently.
- Centre of vital interests there. The centre of vital interests is defined as the place where a person has his closest personal and economic relations.

An individual who is domiciled in Switzerland or has his habitual abode there is fully liable to Swiss income and wealth taxes on his worldwide income and wealth.

In addition, there may be a limited tax liability based on economic relations. Under domestic law, this tax liability can specifically derive from any of the following:

- Running a business or a permanent establishment of a foreign business in Switzerland.
- Ownership of real estate in Switzerland.
- The brokerage of Swiss real estate.

Taxation on exit

3. Does your jurisdiction impose any tax when a person leaves (for example, an exit tax)? Are there any other consequences of leaving (particularly with regard to individuals domiciled in your jurisdiction)?

Switzerland does not levy an exit tax on privately held assets when a person leaves. However, if a person carries on a business in Switzerland, an exit tax may apply.

Temporary residents

4. Does your jurisdiction have any particular tax rules affecting temporary residents?

Under domestic law (if a double taxation treaty does not provide otherwise), individuals are deemed domiciled and resident in Switzerland and become fully liable to tax if they either:

- Work and remain in Switzerland for an uninterrupted period of at least 30 days.
- Are unemployed and remain in Switzerland for an uninterrupted period of at least 90 days.

The individual's absence for a weekend or a short vacation does not necessarily interrupt the relevant period.

Taxes on the gains and income of foreign nationals

5. How are gains on real estate or other assets owned by a foreign national taxed? What are the relevant tax rates?

Foreign nationals are taxed under the same rules as Swiss nationals, provided both foreign and Swiss nationals are tax resident in Switzerland.

A separate property gains tax is due on capital gains realised on the disposal of real estate located in Switzerland. The rules and rates vary between the cantons and depend on how long the property was held. In the case of a short holding, the tax due may be increased by a speculation surcharge (that is, a special charge designed to discourage short-term ownership of real estate, and encourage long-term holding).

No tax is due on capital gains realised on the disposal of personal movable property, unless the taxpayer is deemed to be a professional trader.

The disposal of shares in a real property company can give rise to property gains tax.

6. How is income received by a foreign national taxed? Is there a withholding tax? What are the income tax rates?

The income tax rates of most cantons are progressive and vary from 0% to around 45%, depending on the:

- Amount of taxable income.
- Family status of the taxpayer.
- Canton/commune.

All cantons impose a wage withholding tax on Swiss-resident foreign nationals not holding a permanent residency permit, payable by the employer and withheld from the foreign national's salary. Individuals with a gross salary exceeding CHF120,000 (CHF500,000 in the canton of Geneva) must file an ordinary tax return, and any withheld tax is regarded as a pre-payment. Non-resident individuals (Swiss and foreign nationals) are always subject to a final wage withholding tax on payments (including board member fees) received from a Swiss employer and have no tax filing requirement regardless of the income received.

For Swiss concepts of domicile and residence, see *Question 2.*

Swiss or foreign nationals that are not resident in Switzerland are liable to ordinary taxation (limited tax liability, see *Question 2*) on both:

- Income derived from real estate.
- Loan secured by mortgages on Swiss real estate.

Swiss-source investment income (that is, dividends, interest on Swiss bonds and bank deposits with Swiss banks) is subject to a 35% withholding tax. This is fully recoverable by Swiss residents (whether Swiss or foreign), and is partially recoverable by individuals resident abroad (if a double taxation treaty provides for it). Foreign nationals that do not engage in gainful employment in Switzerland can opt to pay an expenses-based tax (lump-sum taxation) instead of ordinary income tax and net wealth tax, if they have:

- Become resident in Switzerland for the first time.
- Returned to Switzerland after having spent at least ten years abroad.

The tax is assessed on the level of the taxpayer's and his family's annual expenditure. The annual expenditure figure must be equal to at least five times the rent paid for the taxpayer's home, or, if he owns his home, five times the rental value of the property (this is likely to be increased in the near future to at least seven times the rent paid/rental value). A qualifying taxpayer can choose each year between lump-sum taxation and ordinary taxation. Taxpayers may choose ordinary taxation to benefit from applicable double taxation treaties, as not all treaties apply to lump-sum tax payers.

The following changes to the lump-sum taxation regime will be implemented from 1 January 2016 at federal, cantonal and communal levels (depending on the canton, some are already applicable, from 1 January 2014):

- The calculation of minimum lump-sum tax will be based on seven times the rent or rental value of the home in Switzerland.
- The minimum lump-sum tax basis at federal level will be CHF400,000. Cantons remain free to set a minimum tax basis for cantonal and communal tax purposes.
- In the case of married couples, both partners must fulfil the prerequisites for the lump sum taxation regime.

For all existing lump-sum tax arrangements, there is a five-year transition period as the changes enter into force.

Inheritance tax and lifetime gifts

7. What is the basis of the inheritance tax or gift tax regime (or alternative regime if relevant)?

There is no federal inheritance tax (IHT) or gift tax. However, most cantons impose IHT and gift tax if either:

- The deceased person or donor had his last residence in that canton.
- The transferred real estate is located in that canton.

Generally, IHT and gift tax is levied on the market value of the property transferred. However, the taxable basis is not the same in all cantons, and may be lower than the market value. The tax rates are progressive and depend on a number of factors (*see Question 8*).

There is currently a federal popular initiative (that is, a means by which a petition signed by a certain minimum number of registered voters can force a popular vote (in the present case, by 100,000 voters)) for the purpose of introducing a federal gift and inheritance tax. This initiative will be subject to the popular vote (referendum) in a near future. The new federal gift and inheritance tax would replace the respective cantonal regimes. The applicable flat rate would be 20%. However, tax exemptions would still exist, such as in relation to inheritance, donation to spouses or registered partners, or for amounts up to CHF2 million. While a law resulting from this initiative would probably not come into force before 2016, the initiative provides for a significant retroactive effect. All gifts made after 1 January 2012 would already fall under the new tax system.

8. What are the inheritance tax or gift tax rates (or alternative rates if relevant)?

The tax rates are progressive and vary between the cantons.

The IHT and gift tax rates depend on both:

- The amount transferred.
- The relationship between the deceased person or donor and the beneficiary.

Tax free allowance

Tax-free allowances vary between the cantons. For example:

- Transfers on death or gratuitous transfers during lifetime to descendants or to a spouse are generally exempt from taxation or are taxed at a very low rate.
- Transfers on death or gratuitous transfers to unrelated persons are taxed at a rate of 20% to 50%.

The canton of Schwyz does not levy IHT or gift tax, and the canton of Lucerne does not levy gift tax.

Exemptions

Not applicable.

Techniques to reduce liability

The tax rates and the basis for the calculation are generally the same for IHT and gift tax. Therefore, lifetime gifts are not generally subject to a privileged taxation. It has to be noted that a Swiss donee or heir is not subject to gift and/or inheritance tax if the donor/deceased person is domiciled outside of Switzerland, unless Swiss real estate is donated/inherited.

9. Does the inheritance tax or gift tax regime apply to foreign owners of real estate and other assets?

Under Swiss law, the cantonal IHT and gift tax regimes only apply if either:

- The deceased person or donor was last domiciled in Switzerland (*see Question 2*).
- The transfer concerns real estate located in Switzerland.

The right of cantons to impose IHT and gift tax is limited by double taxation treaties (*see Question 14*).

10. Are there any other taxes on death or on lifetime gifts?

There are no other taxes on death or lifetime gifts.

If real property is inherited or donated, the charge of capital gains tax (CGT) on the property is deferred.

Taxes on buying real estate and other assets

11. Are there any other taxes that a foreign national must consider when buying real estate and other assets in your jurisdiction?

Purchase and gift taxes

Both Swiss residents and non-residents must consider the following taxes and charges when buying property in Switzerland:

- **Gift tax.** This may apply if the purchase price of the property is not at arm's length. Other movable assets would be subject to gift tax in Switzerland provided the donor is domiciled in Switzerland (*see Question 8*). The tax rate is calculated as described in *Question 8*.
- **Real estate transfer tax.** This tax is levied in some cantons, but not all.
- **Notary fees.** These fees are due in all cantons in relation to the drafting of public deeds (for example, agreements for the sale and purchase of real estate).
- **Tax on income derived from Swiss real estate.** Real estate income is subject to ordinary taxation. It includes:
  - deemed rental income; and
  - income from loans secured by mortgage on Swiss real estate.
- **Net wealth tax.** This is an annual tax on the value of Swiss real estate. The tax rate depends on the net value (the fair market value of the real estate or other lower tax value determined by tax authorities) less any debts (mortgage, private debts) of the real estate as well as on the commune in which the real estate is located. Wealth tax rates vary from 0.1% to 1% of the net assets.
- **Land tax.** This is an annual tax on the value of the Swiss real estate. The tax basis is calculated differently by each canton or commune. Debts cannot be deducted for land tax purposes.
- **Value added tax (VAT).** This tax may be due on the purchase of movable assets and on the purchase of property located in Switzerland depending on the circumstances.
- **Stamp duty.** This tax is due on the transfer of securities.

12. What tax-advantageous real estate holding structures are available in your jurisdiction for non-resident individuals?

Property can be held either directly or indirectly, through legal entities, trusts or collective investment funds. The tax treatment of a direct or indirect real estate holding depends on various factors, such as (among others):

- The holding period.
- The type of real estate.
- The type of holding structure.
- The canton where the property is located.

There are important legal restrictions and conditions (not tax related) regarding the purchase of real estate that is not purely commercial (whether held directly or indirectly) by those who are not domiciled in Switzerland (*see Question 2*).

In particular, an initiative was adopted by popular vote at federal level for limiting the number of secondary residences. Secondary residences are residences that are not used permanently as principal homes. The government issued an interim ordinance applicable until introduction of federal law. The text of the new constitutional article can be summarised as follows:

- Secondary residences must not exceed 20% of real estate in each commune.
- Construction permits granted after 1 January 2013 are null and void if they do not respect the new quota.

Taxes on overseas real estate and other assets

13. How are residents in your jurisdiction with real estate or other assets overseas taxed?

Individuals who are Swiss residents for tax purposes are taxed on their worldwide income and worldwide wealth, unless a double taxation treaty provides otherwise.

However, domestic tax law exempts real estate and businesses located in another jurisdiction from taxation. However, such assets and income are taken into account to determine the applicable tax rate.

International tax treaties

14. Is your jurisdiction a party to many double tax treaties with other jurisdictions?

Switzerland has entered into more than 70 double taxation treaties, including with the UK and the US, in relation to income, capital, gift and inheritance taxes.

The double taxation treaties generally provide for the following methods for the avoidance of double taxation:

- **Exemption method.** Under this method, income or capital subject to a foreign tax cannot be taxed in Switzerland.
- **Credit method.** Under this method, dividend, interest and royalty income subject to foreign tax is also taxed in Switzerland, but the foreign tax paid is deducted from the final tax amount due on the same income in Switzerland.

WILLS AND ESTATE ADMINISTRATION

Governing law and formalities

15. Is it essential for an owner of assets in your jurisdiction to make a will in your jurisdiction? Does the will have to be governed by the laws of your jurisdiction?

When a Swiss-domiciled individual dies intestate, Swiss courts claim jurisdiction and apply Swiss inheritance law to the worldwide estate (except in relation to real estate located abroad, when the foreign state claims exclusive jurisdiction over real estate within its territory).

Under Swiss inheritance law, the deceased's intestate estate passes to his/her statutory heirs. It is therefore not essential to make a will. However, if an individual is not content with the intestacy rules, or if he wants to appoint an executor, he should make a will. The will must from, a formal aspect, not necessarily be governed by Swiss law. Switzerland also recognises foreign wills that comply with certain formal requirements (*see Question 18*).

If the deceased's last domicile was not in Switzerland, the competent foreign courts have in general jurisdiction over the entire estate, including assets in Switzerland. However, if the foreign authorities do not deal with the deceased's estate of a Swiss citizen living abroad, Swiss courts are competent to deal with the deceased's estate and will apply Swiss succession law. Moreover, if a foreign national dies with last domicile abroad and leaves Swiss assets, the Swiss authorities are competent in relation to such Swiss assets if the foreign authorities do not deal with the Swiss assets. In such case, the Swiss courts will apply the succession law designated under the conflict of law rules of the deceased's last domicile.

Therefore, although it is generally not necessary from a Swiss law perspective to make a separate will specifically for assets located in Switzerland, depending on the law at the place of the last domicile of the deceased, there may be situations where a specific will is necessary.

16. What are the formalities for making a will in your jurisdiction? Do they vary depending on the nationality, residence and/or domicile of the testator?

There are three different types of will:

- **Holographic will.** This is the most common form of private will. It must:
  - be handwritten by the testator (in its entirety);
  - specify the place where (this is not mandatory, but recommended) and date on which it was made; and
  - be signed by the testator.

No witnesses or notarisation are required.

- **Certified (or public) will.** This must be:
  - prepared and certified by a public notary (or other official designated under cantonal law);
  - executed by the testator before two witnesses; and
  - signed by the witnesses, next to the testator's signature.
- **Oral (emergency) will.** This type of will is only available in exceptional circumstances such as war, epidemic or imminent danger of death. The testator must declare his last will in the presence of two witnesses, who must, immediately afterwards, inform the judicial authorities.

The formal requirements for wills do not depend on the testator's nationality, residence or domicile.

Switzerland also recognises foreign wills that comply with certain formal requirements (*see Question 18*).

Redirecting entitlements

17. What rules apply if beneficiaries redirect their entitlements?

Heirs can make post-death variations of their entitlements by mutual agreement. If a post-death variation alters the size of an heir's share under a will or the intestacy rules, it may be considered to be a lifetime disposition among the heirs and be taxed as such. Under certain conditions, exceptions to this rule may apply (for example, when a post-death variation might avoid litigation).

Validity of foreign wills and foreign grants of probate

18. To what extent are wills made in another jurisdiction recognised as valid/enforced in your jurisdiction? Does your jurisdiction recognise a foreign grant of probate (or its equivalent) or are further formalities required?

Validity of foreign wills

The Swiss courts accept any foreign will that complies with the formal requirements of the law applicable under the HCCH Convention on the Conflicts of Laws Relating to the Form of

Testamentary Dispositions 1961 (Hague Testamentary Dispositions Convention).

Validity of foreign grants of probate

Foreign decisions, measures and documents (such as grants of probate) relating to, and rights deriving from, an inheritance abroad, are recognised in Switzerland if they:

- Were either:
  - made in the state of the deceased's last domicile;
  - made in the state the deceased chose to govern succession to his estate (*see Question 25*);
  - recognised in the state of the deceased's last domicile or in the state he chose to govern succession to his estate.
- Relate to real estate and were made or are recognised in the state where the property is located (*lex situs*).

Death of foreign nationals

19. Are there any relevant practical estate administration issues if foreign nationals die in your jurisdiction?

A foreign national whose last domicile was in Switzerland may, by testamentary disposition, choose that the law of the country of his citizenship govern succession to his worldwide estate (*see Question 25*).

Swiss citizens do not have a similar choice of law.

Administering the estate

20. Who is responsible for administering the estate and in whom does it initially vest?

Responsibility for administering

If the deceased did appoint an executor, the executor has sole possession of the assets of the estate and has extensive powers to manage and maintain them. However, the ownership of the assets remains with the heirs.

It is not mandatory to appoint an executor, but it is often advisable, to ensure:

- Fast establishment and collection of the estate's assets.
- Competent and reliable execution of the:
  - testamentary provisions and legacies;
  - testator's directions concerning the division of the estate.

An executor acts in his own name and is neither a representative nor a fiduciary of the:

- Deceased.
- Heirs.
- Estate.

The heirs cannot remove the executor by mutual agreement, or provide him with instructions. However, if all heirs agree on the estate distribution and sign a partition agreement, they can effectively terminate the executor's role and capacity.

If the deceased did not appoint an executor, the heirs are jointly responsible for the administration and distribution of the estate. The heirs may apply for the appointment of a public estate administrator, or the competent authorities may appoint such an administrator if they deem it to be necessary to safeguard the estate and its correct distribution.

Vesting

On the deceased's death, the estate vests jointly in the heirs (*see Question 24*).

21. What is the procedure on death in your jurisdiction for tax and other purposes in relation to:

- Establishing title and gathering in assets (including any particular considerations for non-resident executors)?
- Paying taxes?
- Distributing?

Establishing title and gathering in assets

On death, any will or testamentary pact (*disposition mortis causa*) must be filed with the court of the deceased's last domicile, within one month after his death. The court opens and reads the will, and provides any beneficiary with a copy of the extract of the will relevant to them. One month after notification of their inheritance, the heirs can request the court to issue a certificate of heirship. If the will provides for an executor, the court issues a certificate of executorship, which enables the executor to perform his duties in administering the estate (*see Question 20*).

Procedure for paying taxes

The heirs, together with the executor (if any), must make an inventory of the assets for tax purposes and file an inheritance tax return.

Distributing the estate

The assets of the estate are distributed among the heirs once they have concluded a written contract of division.

22. Are there any time limits/restrictions/valuation issues that are particularly relevant to an estate with an element in another jurisdiction?

There are no set time limits, restrictions or valuation issues that are particularly relevant to an estate with a foreign element. However, if an heir wants to:

- Refuse an inheritance, he must do so within three months.
- Make a claim based on inheritance law, including actions regarding the validity of a will or forced heirship rights, he must generally do so within one year.

See Question 23.

23. Is it possible for a beneficiary to challenge a will/the executors/the administrators?

Beneficiaries can challenge a will (including the appointment of an executor), in the court of the deceased's last domicile, within one year after the deceased's death, or one year of learning of their inheritance and the grounds for challenge. The alleged deficiencies must relate to the following:

- The form of the will.
- The content of the will.

The actions or omissions of executors and official estate administrators can be challenged by appealing to the competent supervisory authorities.

SUCCESSION REGIMES

24. What is the succession regime in your jurisdiction (for example, is there a forced heirship regime)?

Overview of the succession regime

On the death of the deceased, the estate passes directly to the heirs (either under the will or the intestacy rules), who automatically (*ipso iure*) become joint owners of the entire estate (*Articles 457 to 640, Swiss Civil Code (Civil Code*)). Therefore, all rights and liabilities (that is, debts and obligations) of the deceased at the time of his death pass to the heirs. If there is more than one heir, the heirs form a community of heirs and jointly hold all rights and liabilities of the estate, until it is divided. An heir can renounce his share in the estate within three months after becoming aware of his inheritance.

Swiss law distinguishes between those heirs who receive an inheritance under the deceased's will (appointed heirs) and those who receive an inheritance on the intestacy of the deceased (statutory heirs) (*see Question 28*).

Forced heirship regime

The testator is, in principle, free to depart from the intestacy rules (*see Question 28*). However, there are statutory limitations protecting certain categories of statutory heirs. These heirs have a right to a compulsory portion of the estate (forced heirship right). Therefore, a testator can only dispose by will of the freely disposable portion of his estate (that is, his entire estate less the compulsory portions).

The spouse and descendants (or parents, if there are no descendants) are protected under the forced heirship regime. Their compulsory portions, amounting to a specified fraction of the share they would be entitled to if the deceased died intestate (statutory share), are:

- For the spouse: 50% of his statutory share.
- For the descendants: 75% of their statutory share.
- For parents: 50% of their statutory share.

In addition, the following rules apply:

- If there is a spouse but no descendants or surviving parent, the freely disposable portion is 50% of the estate.
- If there is a spouse and descendants, the freely disposable portion is 37.5%.
- If there is a spouse and parents, the freely disposable portion is 50%.
- If there is no spouse but descendants, the freely disposable portion is 25%.
- If only parents survive, the freely disposable portion is 50%.

Forced heirship rights may also affect trust assets (*see Questions 25* and *30*).

Forced heirship regimes

25. What are the main characteristics of the forced heirship regime, if any, in your jurisdiction?

Relevant assets

There is a forced heirship regime in Switzerland (*see Question 24, Forced heirship regime*). When calculating the value of the estate, to establish the forced heirship portions, Swiss succession law takes into account:

- The net value of all the assets held by the deceased at the date of his death, irrespective of where they are located (with the exception of real estate located in countries claiming exclusive jurisdiction over such assets) or whether they were held directly by the deceased or through an offshore entity (in relation to trusts, *see, Question 30*).
- Lifetime gifts from the deceased to beneficiaries in any jurisdiction made, primarily:
  - within five years before the deceased's death; or
  - for the evident purpose of evading the forced heirship rules.

Avoiding the regime

Foreign nationals domiciled in Switzerland can choose that the law of their country of nationality regulates succession to their estate (*professio iuris*) (*Article 90(2), Swiss Private International Law Act (PILA)*) (*see Question 19*). This avoids the application of Swiss law, including the forced heirship regime.

Assets received by beneficiaries in other jurisdictions

(See above, *Relevant assets*.)

Mandatory or variable

Forced heirs can waive their rights by entering into a succession pact with the testator. There are formal requirements for a succession pact.

Real estate or other assets owned by foreign nationals

26. Are real estate or other assets owned by a foreign national subject to your succession laws or the laws of the foreign national's original country?

If the deceased's last domicile was Switzerland, the Swiss judicial or administrative authorities have jurisdiction in probate proceedings and inheritance disputes and apply Swiss inheritance law, regardless of the deceased's nationality or where his property is situated (*Article 86, PILA*). However, foreign nationals can choose that the law of their country of nationality governs succession to their estates (*see Question 25*).

Despite the above, the jurisdiction of states claiming exclusive jurisdiction over real estate within their territory is reserved.

If the deceased was a foreign national not domiciled in Switzerland, Swiss jurisdiction is limited to property in Switzerland if that part of the estate is not dealt with by the competent foreign authorities. In such cases, Swiss courts apply the law designated by the private international law rules of the state in which the deceased was domiciled.

27. Do your courts apply the doctrine of *renvoi* in relation to succession to immovable property?

Switzerland has jurisdiction over the entire (worldwide) estate of a deceased foreign national whose last domicile was in Switzerland, unless provided otherwise (*see Question 26*).

In relation to movable and immovable property located in Switzerland and owned by a foreign national who died domiciled abroad, Switzerland accepts jurisdiction to the extent that foreign authorities will not deal with such property (for

example, where a foreign court refuses jurisdiction over immovable property located abroad).

INTESTACY

28. What different succession rules, if any, apply to the intestate?

On the intestacy of the deceased, the statutory heirs inherit the entire estate. The applicable rules depend on which relatives of the deceased are alive at the time of the deceased's death:

- The surviving spouse inherits, as a proportion of the estate:
  - 50% if there are surviving descendants;
  - 75% if there are no surviving descendants but surviving parents or their descendants;
  - 100% if there are no surviving descendants, surviving parents or their descendants.
- Surviving descendants inherit in equal shares:
  - 100% if there is no surviving spouse;
  - 50% if there is a surviving spouse.
- Surviving parents inherit in equal shares:
  - 25% if there is a surviving spouse but no surviving descendants;
  - 100% if there are no descendants and no surviving spouse.

If one of the deceased's parents is deceased, that parent's descendants inherit that share. If the deceased parent does not have any other descendants, the entire estate passes to the surviving parent.

- Surviving grandparents, or their descendants, inherit in equal shares if there are no surviving spouse, descendants, parents, brothers and sisters or nieces and nephews.
- If there is no surviving spouse, descendants, parents, siblings, or grandparents or their descendants, the estate passes to the municipality where the deceased had his last domicile.

An heir is treated like an heir who is pre-deceased if he:

- Renounces his inheritance.
- Was disinherited.
- Is deemed unworthy to inherit (due to committing certain acts against the deceased as defined by statute).

29. Is it possible for beneficiaries to challenge the adequacy of their provision under the intestacy rules?

This is only possible in case of violation of a beneficiary's forced heirship rights (*see Question 24, Forced heirship regime*).

TRUSTS

30. Are trusts (or an alternative structure) recognised in your jurisdiction?

Type of trust and taxation

There are no trusts under Swiss substantive law (*see Question 30*).

The nearest equivalent to a trust is a foundation (that is, a legal entity to which assets are contributed for a specified purpose). However, the use of a Swiss foundation for the maintenance of a family is very limited (*see Article 335, Civil Code*).

Residence of trusts

The seat of a trust is deemed to be at the place of its administration as specified in writing in the trust instrument or in any other form that can be evidenced in writing. If there is no specification, its seat is where the trust is effectively managed (*Article 21, PILA*).

31. Does your jurisdiction recognise trusts that are governed by another jurisdiction's laws and are created for foreign persons?

Switzerland has ratified the HCCH Convention on the Law Applicable to Trusts and on their Recognition 1985 (Hague Trusts Convention). Therefore, Switzerland recognises any foreign law trust that falls within the definition of Article 2 of the Hague Trusts Convention. It is irrelevant whether or not the settlor is Swiss.

Under the Hague Trusts Convention, trusts are governed by the law either:

- Chosen by the settlor.
- Most closely connected to the trust if the settlor has not made a choice.

The applicable law governs the validity, construction, effect and administration of the trust.

Swiss courts decline jurisdiction if the trust deed explicitly designates a foreign court. If the trust deed is silent on jurisdiction, Swiss courts accept jurisdiction if:

- The trustee has his domicile or habitual residence in Switzerland (*see Question 2*).
- Switzerland is either:
  - designated in the trust's instrument as the place from which the trust is administered;
  - the place from which the trust is administered as a matter of fact (if the trust's instrument is silent on the matter);
  - the trust has a presence in Switzerland and the claims relate to the trust's activity in Switzerland.

As trusts are recognised in Switzerland, a trustee can sue and be sued in Swiss courts in relation to the settlement of a trust, for example in:

- Clawback claims brought by an heir in connection with an estate under Swiss jurisdiction.

- Undue preference claims brought by the administrator of a Swiss bankrupt estate.

32. What are the tax consequences of trustees (for example, of an English trust) becoming resident in/leaving your jurisdiction?

As Swiss substantive law does not recognise trusts, trusts cannot be imported into Switzerland. However, the settlor and beneficiaries of a foreign trust can be liable to Swiss taxation in respect of trust assets and distributions if they:

- Are resident in Switzerland at the time of the settlement of the trust or a distribution from it.
- Move to Switzerland after the trust has been settled.

The trustee is generally not taxed on the assets of the trust and the income derived from it as these assets are not attributed to the trustee for tax purposes.

The taxation of trusts depends on the type of trust involved (*see below*).

Types of trusts

There is a distinction between revocable, irrevocable and discretionary trusts, and irrevocable fixed interest trusts.

For a trust to be irrevocable, all of the following must apply:

- The trust deed provides for it.
- The settlor does not have the right to revoke the trust either because:
  - he is a beneficiary;
  - he has, on the facts, a decisive influence over the trustee.

Tax treatment of revocable trusts. If the trust is revocable, the trust funds are only attributed to the settlor for Swiss income and wealth tax purposes if the settlor:

- Is a Swiss resident.
- Moves to Switzerland after the settlement of the trust.

Tax treatment of irrevocable trusts. If the trust is irrevocable and discretionary, neither the settlor nor the beneficiaries are liable for Swiss tax in respect of the trust funds if they were not resident in Switzerland at the time of the settlement, even if they subsequently become Swiss residents.

If the settlor was a Swiss resident at the time of the settlement, the trust is, usually, disregarded for tax purposes and the trust assets are attributed to the settlor personally.

If the trust is an irrevocable fixed interest trust, the beneficiaries are liable for wealth tax on the trust assets.

Distributions by foreign trusts to Swiss-resident beneficiaries

Certain distributions by foreign trusts to Swiss-resident beneficiaries may be subject to Swiss taxes:

- **A distribution out of a revocable trust.** This is characterised as a gift from the settlor and is potentially subject to cantonal gift tax, if the settlor is domiciled in Switzerland at the time of the distribution.
- **A distribution out of an irrevocable fixed interest trust.** In this case, the Swiss-resident beneficiaries are regarded as holders of a life interest (*usufruct*) in the trust assets. This means that, for income tax purposes, trust income is attributed to the beneficiaries on an arising basis.
- **A distribution out of an irrevocable discretionary trust.** In this case, income tax is levied only once the trustee exercises his discretion to make a distribution. A distribution of trust income is therefore taxed as income, whereas a distribution of trust capital is not taxed. In general, a distribution of capital gains is taxed as income (although several cantons do not tax capital gains).

33. If your jurisdiction has its own trust law:

- Does the law provide specifically for the creation of non-charitable purpose trusts?
- Does the law restrict the perpetuity period within which gifts in trusts must vest, or the period during which income may be accumulated?
- Can the trust document restrict the beneficiaries' rights to information about the trust?

Switzerland does not have its own trust law (*see Questions 30 to 31*).

34. Does the law in your jurisdiction recognise claims against trust assets by the spouse/civil partner of a settlor or beneficiary on the dissolution of the marriage/partnership?

Under the most common Swiss matrimonial property regime (that is, participation in accrued gains, see *Question 37*), each spouse retains and manages his or her own assets and acquisitions during the marriage. Therefore, the spouses are in principle free to transfer their own assets into trust.

However, on dissolution of the marriage, each spouse is entitled to one-half of the other spouse's assets that were acquired during the marriage, subject to contractual modifications by the spouses (*see Question 37*). All donations, including settlements into trust, made within five years before the dissolution of the marriage are added to the calculation (unless the other spouse had consented). If the remaining assets are not sufficient to cover the spouse's entitlement to one-half of the acquisitions, Swiss law provides for a clawback claim against the recipient of such donation, for example, a trustee.

35. To what extent does the law of your jurisdiction allow trusts to be used to shelter assets from the creditors of a settlor or beneficiary?

As a rule, creditors cannot attach assets that are in an irrevocable discretionary trust. However, Swiss bankruptcy law provides for a number of avoidance actions on the grounds of fraudulent conveyance.

OWNERSHIP AND FAMILIAL RELATIONSHIPS

Co-ownership

36. What are the laws regarding co-ownership and how do they impact on taxes, succession and estate administration?

In the case of co-ownership, only the deceased's share is taken into account for the purposes of tax, succession and estate administration.

Familial relationships

37. What matrimonial regimes in trust or succession law exist in your jurisdiction? Are the rights of cohabitees/civil partners in real estate or other assets protected by law?

Matrimonial regimes have no direct relevance to inheritance rights of spouses, but they have an important impact on the calculation of a deceased's estate. Depending on the regime in place, a spouse is entitled to a specified share of the deceased's assets before the opening of the succession. This share is not part of the estate for succession purposes.

The following matrimonial regimes are available:

- **Participation in accrued gains (the most common regime).** Under this regime, each spouse retains and manages his or her own assets and acquisitions during the marriage. On dissolution of the marriage by death or divorce, each spouse retains, subject to contractual modifications by the spouses:
  - his or her own assets brought into the marriage;
  - his or her assets acquired during the marriage by gift or inheritance;
  - one-half of all acquisitions made by each of the spouses during the marriage.
- **Separation of goods.** Under this regime, each spouse retains and manages his or her own assets during the marriage. On dissolution of the marriage, each spouse retains his or her separate property.
- **Community of property.** Under this regime, subject to contractual modifications by the spouses, each spouse holds his or her personal property and the other assets of the marriage are jointly owned and managed. On dissolution of the marriage by death, the joint assets are, in principle, equally divided. On dissolution of the marriage by divorce, the joint assets are divided, broadly following the rules governing the division under the accrued gains regime (*see above*).

The rights of cohabitees/civil partners in real estate or other assets are not specifically protected by law.

38. Is there a form of recognised relationship for same-sex couples and how are they treated for tax and succession purposes?

Switzerland recognises same-sex registered partnerships. Under the Partnership Act, which came into effect on 1 January 2007, same-sex couples can register their relationship with a Civil Registry Office. To register, at least one of the partners must be a Swiss national or domiciled in Switzerland. The partners must personally go to the Civil Registry Office at the place of their domicile and request the registration of their partnership.

In terms of inheritance law and social security, registered partnerships have the same rights as married couples and they are taxed in the same way as spouses for income, wealth and inheritance tax purposes.

39. How are the following terms defined in law:

- Married?
- Divorced?
- Adopted?
- Legitimate?
- Civil partnership?

Married

This is a legal term, referring to the completion of a civil wedding ceremony before a Swiss civil servant, or a recognised foreign marriage.

Divorced

This is a legal term, referring to the ending of a marriage by a decision of a Swiss court or a recognised foreign grant of divorce.

Adopted

This is a legal term, referring to the completion of a legal process executed by a Swiss civil servant or a recognised foreign adoption, whereby the rights and duties between a person and his natural parents are transferred to the adoptive parents.

Legitimate

This is not legally defined.

Civil partnership

This is a legal term to define same-sex couples who have registered their relationship with the Civil Registry Office (*see Question 38*).

Minority

40. What rules apply during the period when an heir is a minor? Can a minor own assets and who can deal with those assets on the minor's behalf?

A minor can own assets. The assets are generally administered and dealt with by the minor's parents. This also applies to inherited assets, unless the deceased appointed a third party to administer the minor's share in the estate.

If there is only one parent with parental responsibility, that parent must provide the guardianship board with an inventory of the minor's assets. The guardianship board can, at any time, order measures to preserve the minor's assets and, as a last resort, appoint a custodian to administer the minor's estate in place of the parent.

Unless otherwise stipulated by the deceased, a minor's parents can use the income from the minor's assets for that minor's maintenance, education and training, and for the needs of the entire household (if appropriate). Any remaining income becomes part of the minor's estate. The guardianship board

can authorise the parents to use some of the child's capital, if necessary.

The deceased can, in his will, expressly exclude parents from administering their child's inheritance, and instead appoint a third party. The guardianship board may require the third party to submit periodic accounts and reports.

On 1 January 2013, a revision of the guardianship legislation entered into force. However, the revision does not have any impact on the above, except for the fact that the guardianship board has been renamed "child protection authority".

Parents must transfer their child's inheritance to him when he reaches the age of 18 years. They are liable for any losses incurred because of inadequate administration of the property.

CAPACITY AND POWER OF ATTORNEY

41. What procedures apply when a person loses capacity? Does your jurisdiction recognise powers of attorney (or their equivalent) made under the law of other jurisdictions?

When a person loses capacity, he is placed under guardianship.

On 1 January 2013, a revision of the guardianship legislation entered into force. Under the new law, a person having capacity to act may mandate a person to assume responsibility for the care of his person or finances or to represent him in legal matters in the event he should lose capacity (lasting power of attorney). Such lasting power of attorney must comply with certain formal requirements.

If no lasting power of attorney has been issued, the person's spouse or registered partner living in the same household or who regularly and personally assists him or her, must have the power to represent the person lacking capacity. However, the consent of the adult protection authority is required for certain legal acts.

Further, whenever the interests of the principal are threatened or become compromised, the adult protection authority must act to take the necessary measures *ex officio* or at the request of a person close to the principal.

Foreign powers of attorney and other relevant measures are recognised under the HCCH Convention Concerning the Powers of Authorities and the Law Applicable in Respect of the Protection of Infants (Hague Powers of Authorities Convention).

A person who loses capacity can only make a will if he is deemed to have the necessary capacity to do so.

PROPOSALS FOR REFORM

42. Are there any proposals to reform private client law in your jurisdiction?

There is currently a federal initiative under way, which seeks a referendum on whether to introduce a federal gift and inheritance tax. The new tax would replace the respective cantonal regimes. The applicable flat rate would be 20%. Spouses would be exempt and the threshold would be CHF2 million (*see Question 7*).

In addition, there is a federal initiative pending that aims to abolish the lump sum taxation regimes that exist in several Swiss cantons. It is expected that this vote will take place in the latter half of 2014, or in 2015. If the initiative prevails, it is likely that there will be a transition period.

Finally, Regulation (EU) 650/2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (Succession Regulation) came into force on 16 August 2012 and will become directly applicable on 17 August 2015. Although the Succession Regulation does not change the substantive Swiss inheritance law, it will affect Swiss residents in relation to other EU member states (such as in relation to citizenship, assets located in an EU member state, time spent in an EU member state on a regular basis and so on).

ONLINE RESOURCES

Swiss Federal Authorities

W www.admin.ch

Description. Official website of Switzerland's Federal Authorities, where original and up-to-date language of the text of the legislation can be obtained. Original texts are available in German, French and Italian. The website provides for an English translation of some of the texts. However, as English is not an official language in Switzerland, these translations are for information purposes only.

Swiss Federal Court

W www.bger.ch

Description. Official website of the Swiss Federal Court, which includes court decisions in German, French or Italian. No English translations are available.

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Publications

- *The Swiss-American Succession, Succession 2/2013, November 2013 (co-authors Raphael Cica and Daniel Bader)*.
- *Atlantic Divide STEP Journal, November 2013*.
- *Arbitration in Switzerland, The Practitioner's Guide, Arbitrating Trust Disputes, November 2013*.
- *International Trust and Divorce Litigation, Switzerland International Trust and Divorce Litigation, UK 2013*.
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- *Trusts in the context of Swiss divorce proceedings, Trust & Trustees, October 2011*.

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Publications

- *The Swiss-American Succession, Succession 2/2013, November 2013 (co-authors Tina Wüstemann and Raphael Cica)*.
- *Push-down of Acquisition Debt: Swiss Tax Law Practice, Bär & Karrer Briefing, June 2013 (co-author Raoul Stocker)*.
- *Single Family Offices in Switzerland, Practical Law Private Client Multi-jurisdictional Guide 2012/2013 (co-authors Andreas J Bär and Daniel Leu)*.
- *Die mehrwertsteuerliche Stellung der Betriebsstätten, ASA 78 Nr 11/12 2009/2010 (Bern 2010)*.