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& KARRER

**Welcome
to Switzerland**

Areas of focus

We provide bespoke advice to domestic and international private individuals who seek expert legal advice in Switzerland and around the globe.

- Art Law
- Estate Administration
- Family Law
- Family Offices
- Pensions & Social Security
- Real Estate
- Relocations
- Succession & Wealth Planning
- Tax Planning
- Trust & Estate Litigation



Relocation to Switzerland

In today's globalized world, migration is no longer just driven by economic and existential needs. People increasingly choose to be expatriates and lead international lifestyles. As such, relocation planning has never been as important. Also, families are increasingly spread across jurisdictions, rendering relocation and estate planning as well as investment and financial advice for family members and stakeholders (e.g. family offices and trustees) even more important. In this brochure, we set out the most important legal and tax considerations to bear in mind if you are planning a move to Switzerland. Following a brief general overview of the Swiss political system, the brochure summarises the most important tax laws, the rules on foreigners acquiring Swiss real estate and the most relevant aspects of Swiss family, divorce and succession law.

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This brochure aims at providing individuals who think about relocating to Switzerland as well as their advisers with an overview of the most relevant legal and tax issues to consider before taking the final decision to relocate. It can and should not replace personal advice which is very important not only with regard to a relocation to Switzerland in general but also in light of the broad autonomy of the cantons and the range of different (tax) regimes and rules existing among all 26 of them. Further aspects typically need to be covered within the framework of executives' and entrepreneurs' relocations. For a variety of reasons, we strongly recommend obtaining legal and tax advice before taking up residence in Switzerland.

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Switzerland at a Glance

Overview

Switzerland has a population of approximately 8.7 million, of which roughly one quarter are foreign nationals. The country has four official languages (German, French, Italian and Romansh) and English is also widely spoken.

Politically and economically, Switzerland is one of the most stable countries in the world. It is a federal republic made up of 26 cantons, each of which has considerable autonomy in the areas of taxation, healthcare, social welfare, law enforcement and education; this creates a number of differences in local governance.

Ranked amongst the wealthiest countries in the world, Switzerland is also renowned for its high quality of living. Its largest city, Zurich, was recently ranked second in the Mercer Quality of Living Survey¹,

¹ Quality of Living City Ranking by Mercer (2019), available at: <https://mobilityexchange.mercer.com/insights/quality-of-living-rankings>.

followed closely by other Swiss cities, Geneva, Basel and the capital, Bern. Few other countries can boast as many cities in the top 20.

Switzerland has a stable economy thanks to its highly developed professional services sector (including banks and insurance companies) and thriving manufacturing and pharmaceutical industries. Competitive taxation levels both for individuals and corporations help to stimulate business and migration. Moreover, Switzerland has one of the highest concentrations of philanthropic foundations in the world.

Switzerland's outstanding healthcare system consists of a combination of public, private and semi-private healthcare institutions. These offer a large network of highly qualified doctors and hospitals, which are equipped with the most cutting-edge medical facilities. The Swiss healthcare system is not only attractive for international clients and relocators but has, for many years, proven itself as a reliable source of basic and further medical support for the Swiss population in general.

Political System

The political system of Switzerland is based on the Federal Constitution of 1848. The latter determines that Switzerland is governed under a federal system at three levels: the Confederation, the cantons and the municipalities. At each level, the political authority is divided into legislative, executive and judicial powers.

The Federal Assembly (legislative power)

On the federal level, the legislative power is exercised by the Federal Assembly, which consists of two chambers, the National Council and the Council of States. The National Council has 200 seats and represents the population of Switzerland as a whole. The 200 seats in the National Council are assigned to the cantons in proportion to their population. The Council of States represents the cantons and has 46 seats: two for each canton and one for each half-canton.

The two councils have equal powers. The representatives for each

chamber are elected by popular vote for a four-year term directly by the Swiss population.

As the legislative power, both chambers debate all constitutional amendments before they are submitted to a popular vote. They also decide on the enactment, amendment or repeal of federal laws. as becoming subject to the automatic international exchange of information and the American CRS and FATCA regimes.

The Federal Council (executive power)

On the federal level, Switzerland is governed by the Federal Council, a seven-member collegial body in which the main political parties and the country's different regions and languages are represented. Every four years, the members are elected or re-elected by the Federal Assembly. Although one of the Federal Council members, on a rotating annual basis, takes the seat of the "Federal President", this position is more of a representative nature; Switzerland does not formally have a president with special powers.

The Judiciary

The judiciary comprises of federal and cantonal courts. Each canton has its own courts of first instance and a second instance of appeal. The highest judicial authority is the Federal Supreme Court located in Lausanne (with a branch in Lucerne), which is the final instance of appeal against decisions of: the cantonal courts of appeal; the Federal Criminal Court, located in Ticino; the Federal Administrative Court and the Federal Patent Court, both located in St. Gall.

Participation rights of citizens

Due to the structure of Switzerland as a direct democracy, Swiss citizens can in many ways participate in the political decision-making process,

e.g. by means of a popular initiative or a referendum. The popular initiative allows citizens (under certain conditions) to propose an amendment to the Federal Constitution, while the referendum enables citizens to request that bills approved by the Federal Assembly are put to a nationwide vote. All constitutional amendments are subject to a mandatory referendum.

Swiss citizens can also exercise their political rights on a cantonal and communal level whereby some cantons and municipalities also allow non-Swiss residents to participate if they meet certain conditions (e.g. permanent residence permit).

Cantons of Switzerland



Cantons

Appenzell Inner-Rhodes	Grisons	St. Gall
Appenzell Outer-Rhodes	Jura	Thurgovia
Argovia	Lucerne	Ticino
Basel-City	Neuchâtel	Uri
Basel-Country	Nidwald	Vaud
Berne	Obwald	Valais
Friburg	Schaffhausen	Zoug
Geneva	Schwyz	Zurich
Glarus	Solothurn	

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Migrating to Switzerland

Residency

Switzerland operates a dual immigration system with different rules applying to EU/EFTA and non-EU/EFTA nationals.

EU/EFTA Nationals

EU/EFTA nationals are entitled to live and work in Switzerland if they have an employment contract with a Swiss employer. Non-working EU/EFTA nationals can only obtain a residence permit if they have sufficient means to pay their living and (compulsory) health insurance costs. As a general rule, close family members of EU/EFTA nationals who have a Swiss residence permit are entitled to join them and reside in Switzerland.

Non-EU/EFTA Nationals

Non-EU/EFTA nationals are only eligible for a work permit if they or

their employer can show that they are specifically qualified for the position and there is no suitable person from Switzerland or the EU/EFTA to fill the job vacancy. Non-working EU/EFTA nationals are only eligible for a residence permit if they are over 55 years of age, have sufficient financial means and close ties to Switzerland, or if they are of particular economic interest to the canton in question, for example, because of the tax revenue they would bring (e.g. based on a lump-sum tax arrangement) or their business activities.

Family members of non-EU/EFTA nationals with a Swiss residence permit are also eligible for residence; however, the authorities exercise discretion when granting such permits.

Citizenship

In order to obtain Swiss citizenship, foreigners must first be in the possession of a permanent residence permit (C) and obtain a naturalisation licence by successfully completing a citizenship test. The requirements for eligibility for the test are ten years of residency and successful integration in Switzerland. To satisfy the integration requirement, applicants must be able to communicate in at least one of the national languages spoken in their municipal community of residence and must respect the fundamental principles of the Swiss constitution.

It must be noted that dual nationality is admissible under Swiss law. Thus, a person becoming a Swiss citizen does not need to give up his or her previous citizenship, at least from a Swiss perspective. However, the possibility to keep a home country (and further countries') citizenship should always be checked with such home country or other countries before Swiss citizenship is acquired.

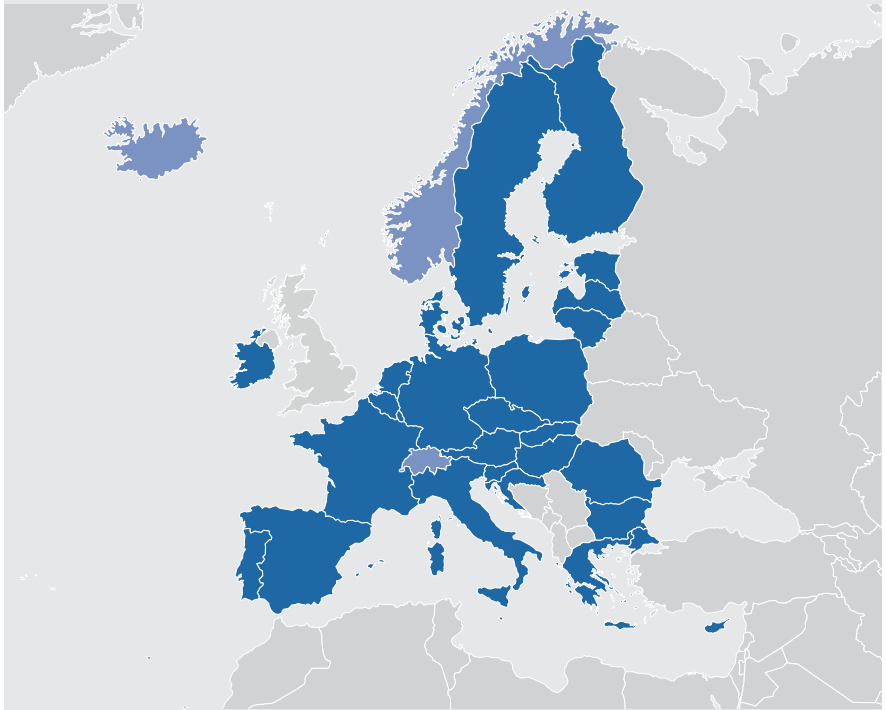
The naturalisation process is governed by federal, cantonal and, at times, municipal law. As a result, the practicalities of the process can vary considerably across the country.

The process is expedited for persons who are married to a Swiss citizen. Foreigners are eligible for Swiss citizenship if they have been married to a

Swiss citizen for at least three years and have lived in Switzerland for a total of five years, including the year immediately preceding the application. Foreigners who are married to a Swiss citizen and live abroad are eligible for citizenship after six years of marriage and if they can demonstrate strong ties to the country.

Children who were minors at the time of the submission of the naturalization application of one of their parents and who were not included in the naturalization process may apply for facilitated naturalization before reaching the age of 22. They must provide proof of residence in Switzerland for a total of five years – three of which must be immediately prior to submitting the application.

List of EU and EFTA states



EU countries

Austria
Belgium
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Ireland
Italy
Latvia
Lithuania
Luxembourg
Malta
Netherlands

EFTA countries

Iceland
Norway
Principality of Liechtenstein
Switzerland

Source:

Sicherheitsfonds BVG (https://sfbvg.ch/fileadmin/_processed_/7/8/csm_karte_eu_efta_02_ba1b040717.png)

Taxation and Social Security

Unlimited Tax Liability in Switzerland

Tax Residence in Switzerland

Under Swiss law, a person is resident in Switzerland for tax purposes if he or she has had an uninterrupted stay of at least 30 days in the country with professional activity or a stay of at least 90 days without professional activity. Unless a double taxation treaty specifically allocates the person's tax residence to another state, he or she will then become subject to unlimited tax liability in Switzerland. This means that his or her worldwide income and wealth become subject to income tax at the federal, cantonal and municipal levels, and to wealth tax on the cantonal and municipal levels. From a Swiss perspective, the centre of vital interests is typically a decisive aspect for determining an individual's tax residence.



In addition to unlimited tax liability in Switzerland, Swiss tax residency typically also brings with it compliance requirements such as the obligation to file an annual tax return and ancillary consequences such as potentially falling within the scope of Swiss reporting obligations under the international automatic exchange of information and the US FATCA legislation.

Taxation of Income and Wealth

Income Taxation

For Swiss tax residents, income tax is generally levied on all forms of income, for example, from employment, investment, pension or real estate. Exceptions apply to certain types of income, most importantly, income derived from:

- Foreign real estate or business;
- Capital gains on privately held assets (e.g. shares); and
- Income constituting a repayment of nominal capital or qualifying capital contribution reserves in companies.

Discussions in the Swiss political landscape nowadays include the potential abolition of the taxation of deemed rental income on self-occupied property and the introduction of a split taxation system for spouses (who, as of today, are taxed jointly in Switzerland). Whether or not these amendments will come into effect and how they would be specifically designed depends on the approval by parliament's chambers and possibly on a popular vote.

Losses on privately held movable assets are not deductible from income tax. It follows that the distinction between privately and commercially held assets is crucial for tax planning purposes.

In addition to the income tax exemptions under domestic legislation, double taxation treaties may provide for other types of income to be exempt from Swiss taxation (but nonetheless reportable and relevant to determine the applicable tax rate; so-called "exemption with progression"). These may include the compensation for board memberships in foreign companies or income from employment activities abroad. The gross amount of taxable income in Switzerland may be further reduced

by various deductions, such as for debt interest, charitable donations, contributions into qualifying pension plans or deductions for professional expenses or wealth management.

The applicable tax rate depends on a number of factors. Income tax rates are progressive and vary depending on the canton and, within a canton, on the specific municipality of residence. Following a referendum held on 19 May 2019, Switzerland adopted the Federal Act on Tax Reform and AHV Financing. Reforms included increased dividend taxation. Dividend inclusion for individuals today amounts to 70% at federal level and to at least 50% at cantonal level (with the cantons free to increase the inclusion ratio even further).

In 2022, the ordinary effective income tax rate for unmarried persons without children or church affiliation at maximum progression, including federal income tax, ranges between 22.2% (Zug) to 45% (Geneva).

Wealth Taxation

Further to the taxation of income and moveable and immoveable assets, Swiss tax residents are also subject to wealth taxation at the cantonal and municipal (but not federal) level. For these purposes, wealth includes cash, bank accounts, real estate, art, precious metals, boats, private jets, shares, options and other forms of investments, irrespective of where they are located. Real estate and businesses abroad are reportable but generally exempt from Swiss wealth taxation (although they are relevant for determining the tax rate; "progression"). While not all of Switzerland's double taxation treaties cover wealth tax, some of the treaties allocate taxation rights for assets situated abroad to the country in which the asset is located. For taxation purposes, gross wealth may also be reduced by various deductions, such as for debt (e.g. mortgages) or, depending on the canton, certain tax-free amounts (e.g. social deductions).

In 2022, wealth tax rates in the various cantons and municipalities range from 0.12% (Schwyz) to 1.03% (Geneva) of the taxable value.

Whether and to what extent wealth planning structures such as trusts and foundations are taken into account for the purposes of Swiss taxation depends on the specific circumstances and must be assessed on a case-by-case basis, typically confirmed by the competent tax authorities within a tax ruling.

Lump Sum Taxation

As an alternative to the ordinary regime of income and wealth taxation, most cantons provide taxpayers the option of being taxed on their worldwide living expenses by way of lump sum taxation (also known as “forfait”). Although cantons Zurich, Basel-City, Basel-Country, Schaffhausen, and Appenzell Ausserrhoden have abolished lump-sum taxation on the cantonal level, it continues to be a possibility at federal level and in most other cantons. Note, however, that the lump-sum taxation regime does not apply to inheritance or gift taxation and to the automatic exchange of information. As a result, wealth and succession planning structures such as trusts and foundations still require an individual assessment for tax purposes. For such structures, it would typically be appropriate to obtain a tax ruling from the competent cantonal tax authorities.

Lump-sum taxation is only available to persons who are not Swiss nationals, who do not exercise a professional activity in Switzerland and who newly relocate to Switzerland or in principle have not lived here during the past ten years. For married couples to qualify for the regime, both spouses must meet the requirements. Cantonal practices in relation to the requirements vary and it is recommended that applicants seek specific advice for their location of choice.

In a lump-sum regime, the income tax basis is derived from the highest amount of the following figures:

- The aggregate amount of the taxpayer’s and his or her spouse’s as well as minor children’s worldwide living expenses;
- The sevenfold of Swiss housing costs; or
- The so-called control calculation; and
- The applicable cantonal and federal minimum amount.



The control calculation takes into account any income from Swiss sources (e.g. real estate investments, pensions, shareholdings, etc.). The basis for wealth taxation is typically determined by the cantonal legislation applicable to taxable income. Both income and wealth taxes are levied at ordinary rates under the lump-sum taxation regime. Both the world-wide living expenses as well as any case-specific questions pertaining, e.g. to the control calculation and to the Swiss tax treatment of wealth and succession planning structures are usually agreed upon by submitting a tax ruling to the cantonal tax authorities.

Domestically, persons taxed under the lump-sum taxation regime are considered to be Swiss tax residents and are recognized as such in most other jurisdictions. However, in order for the taxpayer to be recognized as a Swiss tax resident, e.g. in the US and Germany, any US- or German-sourced income would need to be fully taxed under a so-called modified lump-sum taxation regime.

Due to the exit of the United-Kingdom from the EU, the more restrictive federal law on immigration governs the establishment of UK citizens in Switzerland. In addition to having to prove that they have adequate financial resources to cover their cost of living in Switzerland on a long-term basis and a Swiss health insurance policy, non-EU/EFTA citizens over 55 must prove that they have close ties to Switzerland and, in the absence of such ties or in case they are younger than 55, immigration may be possible only on the basis of the so-called “preponderant cantonal fiscal interest”, subject to previous negotiations with cantonal immigration authorities. The lump-sum tax charge of non-EU/EFTA citizens will need to reflect this, and a close coordination between pre-relocation tax planning and immigration planning is required.

Inheritance and Gift Taxation

Gift and inheritance taxes are levied at the cantonal and municipal level but not federally. Most cantons and some municipalities impose inheritance and gift taxes if one of the following applies:

- The deceased or the donor had their (last) Swiss residence in that canton;

- The asset at hand is real estate located in the canton; or
- The asset at hand is a commercial asset that was transferred abroad from the canton.

Cantons Schwyz and Obwalden do not impose either inheritance or gift tax and canton Lucerne does not impose gift tax.

While the cantonal and municipal legislation applicable to inheritance and gift taxes varies significantly, a key characteristic common to inheritance and gift tax in most cantons is that the liability to pay the tax falls on the recipient (i.e. the donee, heir or legatee). The applicable tax rates and tax-exempt amounts vary between the cantons and depend on the relationship between the deceased / donor and the heir / donee, which should be considered at the planning stage (highest rates for non-related parties vary from 20% in Zug to 50% in Vaud). The progressive nature of the tax rates must also be kept in mind. While transfers to a spouse are exempt from inheritance and gift tax in practically all cantons, transfers to direct descendants are taxable in some cantons or municipalities (e.g. in the cantons of Vaud and Lucerne).

There is a non-negligible risk that taxpayers are taxed more than once for inheritance and gifts because Switzerland has only concluded a handful of double taxation treaties on inheritance tax (e.g. with the UK, Germany and the US). To the extent that it has done so, the treaties are in any event not comprehensive and do not cover gift taxes. Cross-border estates, therefore, require a diligent planning and handling from a legal and from a tax perspective, also in view of liability rules imposed, e.g. on executors by many cantonal inheritance and gift tax laws.

International Exchange of Information: FATCA and AEI/CRS

With the implementation of the Foreign Account Tax Compliance Act ("FATCA"), the US seeks to ensure that it receives information on all accounts held abroad by persons who have a certain US tax nexus. FATCA is a unilateral US piece of legislation which applies to all countries worldwide. It requires foreign financial institutions to disclose information about US accounts to the US tax authorities or to levy a high withholding tax on undisclosed accounts. Swiss

financial institutions report the account information directly to the US tax authorities with the consent of the US customers concerned.

Similar to the FATCA concept, Switzerland has introduced legislation implementing the automatic exchange of information (“AEI”) effective as of 1 January 2017. As of 1 January 2022, Switzerland has agreed to the automatic exchange of information with more than 100 partner countries, including the European Union, Liechtenstein, Russia, Monaco, Cayman Islands, most South-American countries, Australia and the People’s Republic of China, but not the US.

The AEI subjects Swiss financial institutions to reporting requirements pursuant to which they must collect account information relating to persons who are account holders and tax residents in the AEI partner countries. In this regard, the term “persons” refers to structures such as trusts and foundations as well, meaning that the Swiss financial institutions managing trusts’ assets must be aware of who the ultimate controlling person (“beneficial owner”) is, and based on the country of residency of this beneficial owner, the information will in many cases be exchanged with the relevant country.

As most Swiss AEI treaties are reciprocal, Swiss tax residents who hold accounts or other assets outside Switzerland are also subject to the international automatic exchange of information to the Swiss authorities.

Customs and Import VAT

The import of goods is generally subject to import duties (also known as customs duties) and import VAT. In 2022, VAT rates in Switzerland are at 7.7% of the assessment basis, with a reduced rate of 2.5% being applicable to certain goods, such as food products, non-alcoholic beverages, books, magazines and pharmaceuticals. Customs duties are determined based on a tariff system. Compliance with the formal requirements of Swiss customs and VAT legislation is complex and the import of goods, for example, during the relocation process, is typically handled by specialized service providers (usually logistics firms).

Swiss customs and VAT legislation provide for a limited number of

exceptions from import duties, particularly for the import of household goods and cars. In order to be eligible for such exemption during any relocation to Switzerland, the imported items must have been in personal use for at least six months prior to relocation and must continue to be in the relocator's personal use after importation. To benefit fully from these provisions, compliance with the necessary formalities is crucial.

Certain services such as advisory services, received from foreign service providers by Swiss resident recipients are, as soon as the threshold of CHF 10'000.- per year is reached, subject to a 7.7% import VAT. A declaration has to be filed vis-à-vis the Swiss competent tax authority.

No Tax Residence in Switzerland: Limited Tax Liability in Switzerland
Persons not resident in Switzerland for tax purposes may nonetheless be subject to limited tax liability here if they have a specific economic nexus to the country. The most relevant factors that trigger such a liability include: permanent establishments in Switzerland; brokering in or ownership of Swiss real estate; exercising professional activities in Switzerland; membership of a board of directors or management of a Swiss legal entity, and the receipt of pension benefits from Swiss sources. Swiss double taxation treaties contain provisions on how such income should be treated and on how double taxation can be avoided or mitigated.

If limited tax liability applies, only a certain portion of income will be taxable in Switzerland (i.e. income stemming from the above-mentioned sources). At a minimum, this will include the revenue earned from Swiss sources. However, as a general rule, a person's global revenue will be used to calculate the applicable tax rate.

Taxation of Real Estate Transactions

The sale of Swiss real estate triggers real estate capital gains taxation ("RECGT") pursuant to the applicable cantonal legislation. RECGT is imposed on the sellers of Swiss real estate and is levied on the

difference between the proceeds of sale of Swiss real estate and the costs of acquisition (including the purchase price or, in some cases, a deemed value going back a certain number of years and any value enhancing investments in the property). The applicable tax rates and formalities vary between the cantons. Typically, RECGT tax rates decrease over the course of ownership; i.e. the longer the duration of ownership, the lower the RECGT tax rate. Cantonal legislation provides for possibilities to defer RECGT, such as in the event of inheritance, donation or the replacement of real estate property used as a primary home by another Swiss property serving the same purpose.

In addition to RECGT, certain cantons and municipalities apply real estate transfer taxes and notary and land registry fees may also be payable during real estate transactions.

Special rules apply to real estate transactions involving corporate owners or real estate serving commercial purposes.

The Swiss Social Security System

Contributions into the Social Security System

The Swiss social security system consists of three pillars: a public social security element (known as “pillar 1”, the public social security institution); a (private) pension element (known as “pillar 2” and provided by certain private providers); and individual savings (referred to as “pillar 3”, which is offered by banks and insurance companies). Contributions into pillar 1, pillar 2 and partially also pillar 3 are generally tax-deductible. The legal retirement age in Switzerland is set at 64 for women and 65 for men.

Persons working or living in Switzerland are subject to the Swiss social security system. In cross-border situations, a person's participation in the system is decided pursuant to Swiss domestic legislation, bilateral treaties (if applicable) and the coordination rules with the EU/EFTA. Since Brexit, the UK is not considered as a EU/EFTA country anymore. The EU/EFTA coordination rules are no longer applicable to constellations between CH-UK and trilateral cases concerning EU/EFTA

member states-CH-UK as of 31 December 2020. As of the beginning of 2022, the new social security agreement replaces the transition system applied in 2021 and is, for CH-UK bilateral cases, predominantly similar to EU/EFTA coordination rules. However, for constellations in which multiple countries are involved (CH-UK-other member states) the situation has become more complex and requires a deeper case-by-case analysis.

The Swiss social security system depends on social security contributions made by employees, self-employed individuals and also non-working individuals, mainly into pillar 1. A crucial aspect of relocation planning is to correctly determine the social security status of a Swiss tax resident or an individual working in Switzerland as well as to carefully review the Swiss social security treatment of certain wealth planning structures, especially partnership-structures, in order to ascertain the applicable basis and rates for contributions. Swiss social security contributions into pillar 1 range from 10.03%-13.4% (for self-employed individuals) to 11.35%-14.1% (for employees; with contributions being shared equally by employer and employee) of a person's gross income (exact rate depends on canton because of family allowances that differ). Contributions into pillar 2 (the pension) vary depending on the pension provider.

Benefits from the Swiss Social Security System

Current or former Swiss resident individuals who have contributed into the Swiss social security system (into pillar 1) and the social security system of EU/EFTA member states may apply to receive benefits from the Swiss social security system (from pillar 1) upon reaching retirement age.

In addition to the benefits from pillar 1, they may be eligible for further benefits from Swiss pillar 2 or foreign pension schemes and individual savings plans. As a general rule, Swiss and foreign pensions are granted independently and may be accumulated.

Swiss law provides for possibilities to use pension funds before reaching the age of retirement, e.g. to invest into home ownership. The requirements for this are that the residential property be purchased for the persons' own use (excluding secondary residences) and theoreti-

cally the real estate does not even have to be in Switzerland (e.g. for cross-border commuters), but it must always be the main residence.

People that have worked in Switzerland and contributed to a pension fund can request for the cash payment of their accumulated funds when they leave Switzerland definitely. This is possible either for the full amount (for non-EU/EFTA destinations) or only for the supra mandatory part (in case the country of destination is an EU/EFTA state).

The tax treatment of investments in real estate and the withdrawal of pension funds due to final departure from Switzerland has to be reviewed on a case-by-case basis.

Health Insurance

Swiss resident individuals are obliged to arrange a basic health insurance with a Swiss provider. In addition to the basic health insurance, in most cases, additional coverage can be purchased. Swiss legislation provides for certain exceptions to compulsory health insurance, such as for individuals with sufficient coverage abroad which provides for comparable protection and would lead to a double burden. Health insurance is provided by independent Swiss insurance companies, and it is, in particular, not linked to an individual's employment. If a person is not employed, accident coverage must also be included in the health insurance package (meaning accidents will also be covered by the health insurance plan).



Acquisition of Real Estate in Switzerland

Lex Koller

The acquisition of real estate by foreigners, whether they are resident in Switzerland or not, is governed by the so-called Lex Koller regime, which provides for the following framework.

EU/EFTA Nationals with Swiss Residence Permit

As a general rule, EU/EFTA nationals who are resident in Switzerland are not considered to be foreigners under Lex Koller and, therefore, are not subject to any restrictions on the acquisition of Swiss real estate. Nonetheless, prospective purchasers must be able to satisfy the relevant local land registry office that their residence and centre of vital interests is in fact in Switzerland.



Non-EU/EFTA Nationals Resident in Switzerland

Non-EU/EFTA nationals who are resident in Switzerland are considered to be Swiss nationals for the purposes of Lex Koller if they hold Swiss residence permit C. If this is not the case, they may still acquire without authorisation residential property of an appropriate size at their actual place of residence as well as commercial property. Specific authorisation is required for them to acquire a holiday home.

Non-Resident Foreigners

Foreigners who are resident abroad require a special permit in order to acquire Swiss real estate. However, certain real estate transactions are exempt from this rule. Commercial real estate is not covered by the Lex Koller regime and non-resident foreigners are generally allowed to invest in publicly listed real estate companies. The regime also exempts specific persons from the permit requirement such as, most notably, persons who have inherited the real estate and qualify as intestate heirs under Swiss inheritance laws. Some cantons also offer a limited number of special permits each year for the acquisition of holiday homes.

Ownership

Swiss property law recognises the legal forms of sole, joint and co-ownership, and has devised a specific form of ownership in respect of condominium apartments within a shared block. Joint owners of property may only dispose over property unanimously, while co-owners have the same rights and duties as a sole owner over the specific share of property that they own. Specific rules may apply to the ownership of condominium apartments, for example, in relation to the association of the condominium owners, the administration and maintenance of the parts of the building that are in common use and the associated costs.

Formalities

The transfer of real estate must be registered in the local land register. In order to do that, the underlying purchase agreement must be notarized by a public notary in the canton where the real estate is located. Lex Koller

Family and Divorce Law

Swiss Conflict of Law Rules

Swiss family law is governed by the Swiss Civil Code and, for same-sex couples, the Federal Law on Registered Partnerships. Switzerland is also a party to a number of international treaties relevant to this area of law, including:

- Hague Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations 1973;
- Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children;
- Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption 1993;
- Lugano Convention of 30 October 2007 on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters; and
- Hague Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations.



According to the Swiss Code on Private International Law, the Swiss courts at a defendant's place of residence have jurisdiction over an action for divorce or separation. The Swiss courts at the plaintiff's place of residence also have jurisdiction, provided he or she is a Swiss citizen or has been resident in Switzerland for at least one year.

Swiss law applies the principle of unity of the divorce ruling, which means that the court with jurisdiction over an action for divorce or separation is in principle also empowered to deal with all ancillary matters, such as matters involving child welfare (to the extent that they are habitually resident in Switzerland), maintenance obligations, social security issues, division of assets and property distribution.

Pre and Postnuptial Agreements

Both pre and postnuptial agreements are recognised in Switzerland. They usually address questions such as matrimonial property rights and the applicable law. However, certain issues require prior court approval before the agreement can have legal effect, for example, those relating to the preconditions for divorce, any arrangements relating to children or maintenance payments.

Unlike other jurisdictions, Swiss law does not impose requirements as to financial disclosure, independent legal advice or a cooling-off period in order for a pre or postnuptial agreement to be valid. Three different matrimonial property regimes are available under Swiss law. The default regime, applicable to married couples who have not expressly selected any other regime, is known as "participation in acquisitions". This regime distinguishes between individual property (e.g. pre-marital assets and gifts or inheritance received during the marriage) and property acquired by a spouse during the marriage (e.g. income from work and earnings from individual property). If the marriage comes to an end, each spouse maintains their individual property, while the acquired property is divided equally between them.

An alternative regime is that of community of property ("Gütergemeinschaft"), under which all property belonging to the spouses, save for

each spouse's personal belongings or any gifts received from a third party, constitutes the common property of the marriage and is divided equally between them in the event the marriage breaks down.

A second alternative is to opt for the regime of separation of property ("Gütertrennung") under which each spouse retains what is theirs in the event of death or divorce.

If a couple wishes to opt for either of the alternatives, they must do so in a pre or postnuptial agreement. Subject to general legal limitations, a couple can also tailor a pre or postnuptial agreement to their specific circumstances by making amendments to any of the three regimes and can also change the matrimonial property regime with retroactive effect during the course of marriage.

Modern Families in Switzerland

Same-Sex Marriage

Currently, Swiss legislation regarding same-sex relationships is in transition. Until 1 July 2022, same-sex couples could only enter into a registered partnership, but not marry. The registered partnership confers certain rights that are comparable to marriage (e.g. right to share a surname, right to inherit from their partner, right to be protected from termination in rental agreements etc.) but differs with regard to important aspects such as the default marital property regime or the right to adopt.

As of 1 July 2022, same-sex couples will be able to marry or have their registered partnership converted into a marriage. From that date, same-sex couples may no longer enter into new registered partnerships. However, existing partnerships may continue to exist without any specific declaration.

Adoption

The Swiss authorities have jurisdiction to make adoption orders if the adopting person or spouse is resident in Switzerland. A revision of the Civil Code, effective since 1 January 2018, introduced more flexible rules on adoption. There are currently three methods of adoption: (i)

joint adoption by spouses (but not registered partners), who are at least 28 years old and have shared a household for a minimum of three years; (ii) adoption by an individual who is at least 28 years old and is not married or living in a registered partnership; or (iii) adoption by a step-parent in a married couple, registered same-sex partnership or cohabiting relationship, in each case provided that the parenting couple has shared a household for a minimum of three years.

For same-sex couples this means that until 1 July 2022 they are not entitled to adopt children, apart from their stepchildren. However, as of 1 July 2022, married same-sex couples may adopt children subject to the same conditions as heterosexual spouses.



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Succession Planning

Swiss Conflict of Law Rules

Switzerland is not a signatory of the EU Succession Regulation, instead following its own conflict of law rules. This can cause complications if a Swiss estate has ties to the EU. Swiss estates with links to common law countries, such as the US or the UK, also often bring with them a number of complexities due to the intrinsic differences in the inheritance, tax and matrimonial property laws of the different jurisdictions. Careful planning is required to avoid unexpected and nasty surprises.

The jurisdiction of Swiss courts and the applicable law in succession matters is determined by the Swiss Code on Private International Law. From a Swiss perspective, and as a general rule, the courts at a deceased's last place of residence in Switzerland have jurisdiction to deal with the entirety of the deceased's worldwide estate pursuant to the principle of unity of succession. However, Swiss courts would



Landwasser Viaduct, Filisur
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normally defer to the exclusive jurisdiction of a foreign court over any real estate within its territory.

The courts here usually apply Swiss law to the estate of a deceased whose last place of residence was in Switzerland. A foreign national can, however, stipulate in a will that the laws of his or her country of nationality should govern his estate, provided that the deceased does not also hold Swiss citizenship. Such a choice of law clause can be a very effective planning tool. As part of an ongoing revision of the Swiss conflict of law rules, it is currently under discussion whether such choice of law should also be granted to dual nationals with Swiss citizenship.

Intestacy Rules

The substantive rules on Swiss inheritance law are codified in articles 457 to 640 of the Civil Code. In the absence of a valid will, these statutory rules of intestacy will apply to the distribution of a deceased's estate. The heirs who are first in line to inherit a deceased's estate are his or her descendants. Any predeceased children would be represented by their descendants, who would take part in the succession per stirpes, in degree of descent; in other words, they would share the portion of the estate that passed to the predeceased descendant. If a deceased has no descendants, the estate would be distributed amongst his or her parents and their descendants; or, if the parents are no longer alive, the right of inheritance would pass to any grandparents and their descendants.

Surviving spouses are statutory heirs and their share in an estate varies depending on the person with whom they share the inheritance. The surviving spouse has a statutory right to inherit half of the estate if the remaining heirs are descendants; three quarters of the estate if the remaining heirs are the parents of the deceased or their descendants and they would inherit the whole estate if there are no other heirs. Under Swiss law, the surviving spouse is first entitled to a share in the matrimonial property (see section above) and only that which remains after the division of matrimonial property forms part of the estate.

Wills and Inheritance Contracts

Swiss law recognises three forms of will: (i) holographic wills, which are handwritten and signed by the testator; (ii) public wills, which are notarized; and (iii) in cases of emergency (i.e. if the testator is not able to make a will in any other form), wills pronounced orally. In an international context, further forms of wills may be recognised pursuant to the Hague Convention on the Conflict of Laws Relating to the Form of Testamentary Dispositions.

Inheritance contracts are also common and may be used by a testator to agree to transfer upon his or her death property from the estate to the contractual counterparty or to a third person. Heirs may also renounce, either with or without consideration, all or part of their statutory rights of inheritance in the estate of a testator in an inheritance contract agreed with the testator. The same requirements as to the form of a public will apply to inheritance contracts. It must be signed by the contracting parties before a notary and two witnesses. In addition, the formation, content and revocation of an inheritance contract require the consent of all contracting parties. It may also be revoked at any time by written agreement of the contracting parties.

Forced Heirship Rights

Swiss laws on forced heirship restrict a testator from freely disposing over the entirety of his or her estate. The laws on forced heirship give certain family members of a deceased rights to a compulsory portion of their statutory share in an estate. This compulsory portion, referred to as the forced heirship, is a fraction of the statutory share in intestacy, which applies in the absence of a valid will (see section above). The following persons are entitled to a compulsory portion in the deceased's estate:

- Each descendant: compulsory right to three quarters of the statutory share for descendants;
- Surviving spouse: compulsory right to half of his or her statutory share;
- Parents, in the event that there are no descendants: compulsory right to half of their statutory share.

No other persons are entitled to a compulsory portion under Swiss law.

The forced heirship and the freely disposable portions of an estate are calculated based on the value of the estate as at the death of the testator, including the value of certain inter vivos gifts made by the deceased during his or her lifetime. Note in particular that revocable gifts as well as irrevocable gifts made five years prior to death are taken into account for this purpose.

Dispositions made contrary to the rules on forced heirship are not invalid per se. However, if an heir with forced heirship rights has not received his or her compulsory portion, he or she can make a court claim for a corresponding reduction in the value of the disposition/s.

Heirs are permitted to agree to waive their statutory shares in an estate in an inheritance contract/s concluded with the testator during his or her lifetime (see section above).

With regard to the rules on forced heirship, an amendment to the law was recently adopted which will come into force on 1 January 2023. The most significant changes are the reduction of the compulsory portion of descendants (from three quarters to half of the statutory share) and the abolition of the compulsory portion of the parents of a deceased. The resulting increase in the testator's freedom to plan his or her estate upon death is a welcome change given that we are living in times of more complex familial structures (e.g. patchwork families).

However, this is not the end of the revision of Swiss inheritance law. In a further step, the legislator will aim at facilitating the succession in family businesses. Specifically, a deferral model is to be introduced, allowing the successor to pay the compulsory portion of other heirs in instalments. In addition, if a family business is transferred during the testator's lifetime, its value at the time of transfer and not its value at the time of death shall henceforth be decisive for the distribution of the testator's estate.

Administration of the Estate

According to the principle of universal succession, upon death, all of the deceased's assets and liabilities that are not of a highly personal nature (e.g. employment contract) or subject to other special regulations (e.g. pension fund assets or other insurance benefits) automatically pass to his or her heirs. The heirs thus automatically become joint owners as a community of heirs and must henceforth unanimously agree on all questions regarding the administration of the estate until it is divided amongst them. These general rules also apply to the digital estate (e.g. crypto-based assets, files on cloud servers etc.).

If the testator has appointed an executor in his or her last will, the executor is responsible for the administration of the estate. He must in particular establish an inventory of the deceased's assets and liabilities, pay the deceased's debts, manage the estate's assets, pay bequests and prepare the division of the estate in accordance with the deceased's last will.

Trusts

Foreign trusts play an increasingly important role in Swiss estate planning, particularly for international estates. While Swiss law does, for the time being (see below), not have its own concept of trusts, trusts are recognised here following Switzerland's ratification of the Hague Convention on the Law Applicable to Trusts and on their Recognition (the "Hague Trust Convention").

As a consequence of ratification in 2007, foreign trusts, as defined in article 2 of the Hague Trust Convention, are fully recognised in Switzerland, irrespective of where the settlor resides. Switzerland has also enacted jurisdictional provisions so that Swiss courts can apply foreign trust law when adjudicating internal trust disputes (although, depending on the specific circumstances, they may refuse to do so if the trust deed explicitly confers jurisdiction on a foreign court).

There is still no domestic case law to provide guidance on how a trust will be interpreted in the context of Swiss succession principles. As a

result, the law in this area is quite uncertain. The Hague Trust Convention (pursuant to article 15 (c)) does not prevent the application of the Swiss rules on forced heirship regardless of the existence of any trust or trust statute. In other words, the Swiss forced heirship provisions would take precedence over any provisions of a trust or the laws applicable to that trust.

Swiss estates involving trusts have the potential to become involved in complex and extensive litigation. It is, therefore, advisable to seek Swiss legal advice at an early stage of planning to prevent any conflicts between the provisions of the foreign trust and Swiss succession law.

In the absence of any applicable legislation, the tax treatment of trusts in Switzerland is governed by a Circular Letter of the Swiss Federal Tax Administration (Circular Letter No. 20 dated 27 March 2008 entitled, "Trusts"). The circular distinguishes between the following types of trusts:

- Revocable trusts: Revocable trusts are typically held to be transparent structures from both the settlor's and the beneficiary's point of view;
- Irrevocable trusts:
 - Irrevocable fixed-interest trust; and
 - Irrevocable discretionary trust.

The settlor of an irrevocable discretionary trust is not liable for Swiss tax in respect of the trust assets if he was not resident in Switzerland at the time of settlement. In certain situations, this could continue to be the case even if the settlor becomes a Swiss resident after settlement. However, if the settlor was a Swiss resident at the time of settlement, the trust is, usually, disregarded for the purposes of Swiss tax law 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.

Discussions are currently underway as to whether a new legal concept – the Swiss Trust – should be introduced to the Swiss Code of Obligations. However, the legislative process in this regard is still at a very early stage.



Susten Pass, Gadmen
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Adult Protection

By way of a so-called “advance care directive” (ACD) a person may designate a representative who shall take care of his or her personal and financial affairs and represent him or her in legal matters in the event of a lasting incapacity. Moreover, in a so-called “Living Will” a person may make binding provisions regarding medical treatment in the event that he or she is no longer able to express his or her wishes as a result of an accident or illness.

The Swiss Code on Private International Law and the Hague Convention on the International Protection of Adults of 13 January 2000 (HCIPA) determine the international jurisdiction, the applicable law and the recognition of foreign instruments equivalent to the ADC and/or Living Will. Generally, the authorities at the incapacitated person’s place of residence are competent to declare the ACD effective and to take the necessary measures.



Bachalpsee, Grindelwald
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Leaving Switzerland

A person loses his or her status as Swiss resident for tax purposes as soon as a new tax residence is established elsewhere. It is recommended that there be an objectively recognizable and clearly documented relocation of the person's centre of vital interests. Formally, relocating residents should deregister from their municipality of (former) residence, file a final Swiss tax return and designate a tax representative and/or agent, who is authorised to accept mail on their behalf after the move.

Swiss legislation does not impose an exit tax on departing residents. This is one of many features which has helped to make the country an attractive destination for expatriates looking to establish a new home.

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