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A practical cross-border insight
into private client work

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Switzerland

Stefan Breitenstein



Mark Barmes



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1 Pre-entry Tax Planning

1.1 In Switzerland, what pre-entry estate and gift tax planning can be undertaken?

In Switzerland, gift and estate taxes are levied at the level of the Cantons. There are significant differences between the gift and estate tax laws of the different cantons and certain cantons do not even levy gift or estate taxes. Accordingly, one of the most important pre-entry tax planning measures consists in the choice of the place of residence. Presently, there are, however, certain efforts at the political level to review the existing system and introduce a federal gift and estate tax. A prediction regarding the success of these efforts is not possible.

Gift and estate tax is presently levied by the canton of residence of the donor/deceased. For purposes of both taxes, the settlement of a trust or foundation prior to taking up residence may, therefore, remove assets from the ambit of Swiss gift and estate taxes, provided the trust or foundation are recognised for Swiss tax purposes. Recognition for tax purposes is usually denied with regard to revocable structures and in circumstances where the settlor or grantor has not effectively divested himself or herself of the assets settled on trust or given to a foundation. The establishment of a trust or foundation may, depending on the circumstances, have an impact on the income tax situation and must therefore be carefully considered.

For details regarding gift and estate taxes, reference is made to question 3.1 below.

1.2 In Switzerland, what pre-entry income tax planning can be undertaken?

The “lump sum” or “flat” tax system Switzerland affords to foreign citizens coming to live in Switzerland offers a number of tax planning opportunities and in many cases necessitates a tailor-made structuring of the global personal wealth.

Foreign citizens who come to live in Switzerland for the first time (or after an absence of 10 years) and do not engage in any gainful activity in Switzerland will, upon request, be taxed on a “lump sum” basis for cantonal and communal income and net wealth and federal income tax purposes. A limited professional activity can be carried out outside Switzerland but there is debate as to whether a remunerated activity can be carried out abroad, if the employer is Swiss. Some cantons permit “lump sum” taxation also if only one spouse is a foreign national or the other is a Swiss and foreign dual national or even a Swiss national only. Under the “lump sum”

arrangement, tax is levied on the basis of a deemed income based on the annual living expenses incurred in Switzerland and abroad by the taxpayer and his family. The following expenses are typically taken into account: food and clothing; housing (including heating, cleaning, garden maintenance etc.); wages of employees; further education; leisure activities; travel; health cures; cars; boats; yachts; aeroplanes; and all other expenses linked to the standard of living, including direct taxes. In any event, such annual expenditure figure may not be less than five times the annual rent paid for the main accommodation occupied by the taxpayer and his family, or, if the taxpayer owns his own accommodation, five times the rental value of that property.

In practice, the actual tax basis is determined by an advance ruling from the tax administration of the canton in which the individual wishes to take up residence. It may be linked to an index or modified in the event of a significant change in the taxpayer’s standard of living and it is generally reviewed approximately every 3 years. In the majority of cantons there is a practical minimum tax base (“threshold”) or an amount of tax, even if the expenses as determined above are less than this amount. The tax due on the agreed tax base is computed on the basis of the ordinary income and net wealth tax rates applicable to that amount.

In any event, the tax calculation as above must not be less than the taxes determined in a so-called “control calculation” under which certain specific “Swiss items” are aggregated. The most important of these are: real estate situated in Switzerland and income derived from it; securities issued by companies domiciled in Switzerland and dividend and interest income derived from such assets; income from loans guaranteed by a mortgage on a real estate situated in Switzerland; and retirement pay, pension and annuities from Swiss sources. The ultimate tax payable is the higher amount determined by the “control calculation” and the agreed “flat” tax. Some treaties (including those with France, Germany, Austria, Norway, Belgium, Canada and the United States of America) expressly provide that residents of Switzerland taxable under the “lump sum” system are excluded from treaty benefits. However, under the so-called “modified lump sum taxation system”, income from these countries can be declared and fully taxed at normal Swiss rates, and this will allow the taxpayer to claim treaty benefits in respect of such income.

The attraction of the “lump sum” system is not only that it is usually financially advantageous; in practical terms it is simple to apply, without burdensome reporting obligations, e.g. the taxpayer only declares “Swiss items” relevant to the “control calculation” to the tax administration. This enhances privacy and avoids unnecessary complexity. The “lump sum” tax system applies only to income and net wealth tax, not to inheritance taxes.

The “lump sum” tax system is currently subject to a political discussion with a view to harmonising its application. Notwithstanding, the Cantons of Zurich and Schaffhausen abolished the “lump sum” tax system for cantonal and municipal taxes. Recently, other cantons agreed on a minimal amount with respect to taxable income. This minimal amount shall be determined with reference to the rent paid or the rental value of the property owned. The minimum taxable income will be seven times (instead of five) the rental value (or the rent paid, respectively).

1.3 In Switzerland, can pre-entry planning be undertaken for any other taxes?

Please see the answer to question 1.2 above.

2 Connection Factors

2.1 To what extent is domicile relevant in determining liability to taxation in Switzerland?

Physical persons that are connected to Switzerland either through a qualifying physical presence or residency are subject to full taxation in Switzerland on their worldwide income and assets. The concept of domicile as applied in the UK does not have the same importance in Switzerland. Domicile has some significance in the levying of estate and gift taxes and under tax treaties (see question 3.1).

2.2 If domicile is relevant, how is it defined for taxation purposes?

Please see the answer to question 2.1 above.

2.3 To what extent is residence relevant in determining liability to taxation in Switzerland?

A physical person is considered to be subject to unlimited taxation in Switzerland if he or she resides in Switzerland with the intention to permanently stay in Switzerland. The definition of residence focuses on the centre of the personal and economic interests of the person. The relevant criteria for determining residence include the family situation, type and location of professional activities, duration of residency, purpose of residency and housing accommodation.

Further, persons can become subject to limited taxation if they (a) own a business in Switzerland, (b) maintain a business establishment in Switzerland, (c) own real property in Switzerland, or (d) trade or broker real properties located in Switzerland.

2.4 If residence is relevant, how is it defined for taxation purposes?

Tax residency is assumed if a physical person stays in Switzerland, irrespective of temporary interruptions (a) for at least 30 days while pursuing an economic activity, or (b) for at least 90 days while not pursuing an economic activity. No tax residency is established by a person domiciled abroad and residing in Switzerland for the limited purposes of attending a school or medical treatment.

2.5 To what extent is nationality relevant in determining liability to taxation in Switzerland?

Nationality is not a relevant criterion to establish taxation in Switzerland.

2.6 If nationality is relevant, how is it defined for taxation purposes?

Nationality is not relevant for taxation purposes.

3 General Taxation Regime

3.1 What gift or estate taxes apply that are relevant to persons becoming established in Switzerland?

In Switzerland, in general, taxes are assessed on three levels: federal; cantonal; and communal. On the federal level there is no gift and estate tax. However, on the cantonal level, gift and estate tax is levied. The scope of the gift and estate tax varies greatly between cantons. The Canton of Schwyz is the only canton which does not levy gift or estate tax at all. The surviving spouse is exempt from estate and gift taxes in all cantons. Most cantons exempt gifts and bequests between parents and direct descendants. The Canton of Lucerne does not levy any gift tax. Gifts and bequests to unrelated persons are in most cantons progressive and the tax rate may be up to 55% of the market value of the gift or bequest. Generally, the rate is in the range of 30% for unrelated persons. Tax jurisdiction normally lies with the canton of the last domicile of the deceased, respectively the donor. In case the deceased has his or her last domicile in Switzerland, the entire worldwide estate with the exception of foreign real property is subject to Swiss estate tax. Swiss real property and Swiss businesses that are the subject matter of a gift or a bequest can give rise to Swiss gift and estate tax even if the donor or the deceased was not Swiss domiciled.

3.2 How and to what extent are persons who become established in Switzerland liable to income tax?

Residency triggers income tax on worldwide income at the federal, cantonal and municipal level. Spouses are jointly taxed. Excluded from Swiss taxation is income from foreign real property, businesses and permanent establishments (such as, for instance, investments in foreign partnerships).

The tax rates on income are generally progressive and vary greatly from canton to canton and from municipality to municipality. The overall tax rate can be as high as 40%; however, certain cantons, such as the Canton of Schwyz and the Canton of Zug are substantially lower (for the City of Zug the current rate is approx. 23%).

Income tax is owed with regard to all forms of income whether salary, commission, bonus, fringe benefits or income from business operations. Further subject to income taxes are dividends, interest, royalties, pensions etc. If certain requirements are met, dividend income is subject to limited taxation.

Not subject to income tax are, in principle, capital gains on moveable property such as financial assets. In certain instances income taxation may nevertheless arise, for instance, if the person acts as a professional securities dealer.

Income tax may also arise in Switzerland on the basis of special economic connecting factors such as ownership of a Swiss business, the existence of a Swiss permanent establishment, ownership of Swiss real property, commercial activity in Switzerland and board functions in Swiss companies. In these cases the taxation is limited to the relevant Swiss income. The tax rate is, however, determined on the basis of worldwide income.

Foreign employees residing in Switzerland and not holding a C residency permit are subject to a source withholding tax on income.

3.3 What other direct taxes (if any) apply to persons who become established in Switzerland?

Cantons and municipalities levy wealth taxes on the worldwide net assets (market value of the assets less debt).

The tax rate is determined on the basis of the worldwide assets including foreign real estate. Foreign real estate is then excluded from the final tax computation. The majority of the cantons apply progressive tax rates which vary between 0.15% and 1%. Certain cantons allow further deductions.

All cantons levy real estate property gains tax on the gains realised in connection with the sale of Swiss real property. The applicable tax rate varies greatly depending on the canton and depending on the duration of the holding of the property. In order to prevent speculation, short-term holding triggers increased taxation which can go up to 60%. Normally, the tax rate applicable to real estate capital gains varies between approx. 4% (for very long holding periods) and 30%. Majority shareholdings in real property companies are also subject to real property capital gains tax as the share transfer constitutes an economic transfer of ownership of the property.

Certain cantons levy property taxes on the ownership and the usufruct of Swiss real property. The tax is generally based on fair market value of the property and varies between 0.03% and 0.3%.

Certain cantons subject the sale of real property located in the canton to real property transfer tax. However, a number of exemptions apply which include a transfer through inheritance or among members of the family. The real estate transfer tax is based on the purchase price whereby the tax rate varies between 1% and 3%. Certain cantons like the Canton of Zurich no longer levy real estate transfer taxes.

Dividend payments originating from Swiss companies, interest paid by Swiss debtors on bonds, and interest on bank deposits with Swiss banks are subject to Swiss withholding tax at the rate of 35%. Total or partial refund or reduction is available in accordance with applicable double taxation treaties.

Taxable residents of Switzerland are entitled to a full refund of Swiss withholding tax, provided the income is properly declared in the income tax return.

3.4 What indirect taxes (sales taxes/VAT and customs & excise duties) apply to persons becoming established in Switzerland?

On the federal level, value added tax is levied. The Swiss value added tax system is broadly similar to the system applied in EU countries. In some technical respects differences however exist. Every business, independent of its legal form, is subject to VAT if it engages in commercial activity in Switzerland. A business that generates domestic turnover per business year of less than CHF 100,000 is exempt from VAT unless it waives the exemption which may be interesting where the business is primarily exporting goods or services and therefore benefits from the refund of input VAT. VAT is based on gross revenues whereby VAT paid on goods or services purchased (input VAT) can be fully deducted. The VAT rate is 8%, a reduced rate of 2.5% is applicable to food, medication, newspapers, books and agricultural products; hotel services are subject to a special VAT rate of 3.8%.

Special excise taxes are charged on alcoholic beverages, tobacco, petrol products and ownership of motor vehicles. These taxes are generally included in the purchase price and, therefore, not noticed by the consumer.

4 Taxation Issues on Inward Investment

4.1 What liabilities are there to direct taxes on the remittance of assets or funds into Switzerland?

Swiss taxation is generally levied on the worldwide income of Swiss residents (see however question 1.2 above), irrespective of whether income is remitted to Switzerland or not. Accordingly, no direct taxes are triggered, if assets or funds are transmitted into Switzerland by resident or non-resident persons.

4.2 What taxes are there on the importation of assets into Switzerland, including excise taxes?

Importation of goods is subject to import VAT at a rate of 8% or at the reduced rate of 2.5%, where applicable. Importation of certain goods as alcoholic beverages, tobacco and automobiles is subject to custom and excise duties. As Switzerland has a free trade agreement with the European Union, custom duties are generally negligible. In addition, the import of goods for personal use is exempt from customs under *de minimis* exemptions. Care must however be taken in connection with valuable objects, such as art collections, where the importation value may be high. Art is often temporarily stored in Switzerland in so-called custom free warehouses where goods can be imported, stored and exported without becoming subject to Swiss customs, excise duties and VAT.

5 Succession Planning

5.1 What are the relevant private international law (conflict of law) rules on succession and wills, including tests of essential validity and formal validity in Switzerland?

The Swiss conflict of laws rules are set out in the Swiss Private International Law Act. In principle, the estate of a deceased who was resident in Switzerland at the time of his death is subject to Swiss law. Swiss law may be applicable even where the deceased has made a foreign will before taking up residence in Switzerland. As an exception, foreign nationals who do not have Swiss nationality may opt to have their estate governed by the laws of one of the countries of nationality provided the deceased is still a national of that country upon his death and has not become a Swiss national in the meantime. This choice of law (*professio iuris*) may be made by will or by testamentary contract. Different rules apply to testamentary contracts, mutual wills and other mutual dispositions *mortis causa*.

Wills are generally subject to the laws applicable to the estate. Based on the principle of *favour testamenti*, the capacity of the testator to make a will is, however, determined separately and it is sufficient that capacity existed pursuant to one of several possible applicable laws enumerated by the Swiss Private International Law Act.

Commitments and dispositions by testamentary contract as well as the testamentary contract itself are subject to the laws of the country of residence of the testator at the time of conclusion of the testamentary contract notwithstanding that the testator may have been Swiss resident at the time of his death. This does, however, not affect the part of the estate not dealt with in the testamentary contract which remains subject to the general principle set out in the first paragraph. By including a choice of law provision in the testamentary contract regarding the *entire estate* the testator may make the testamentary contract and also the rest of his estate subject

to the laws of his principal nationality, i.e. the laws of the country with which the testator has the strongest connection. For Swiss nationals, the principal nationality is deemed to be Switzerland.

The formal validity of a will or a testamentary contract is determined in accordance with the Hague Convention on the Conflicts of Laws relating to the Form of Testamentary Dispositions.

The competent authorities for any matters concerning the estate of a deceased are determined separately and independently from the applicable law. The competent authorities are the Swiss authorities at the place of the last residence of the deceased. Special rules may apply for Swiss nationals abroad or where assets located in Switzerland form part of a foreign estate and the foreign authorities do not deal with the estate.

5.2 Are there particular rules that apply to real estate held in Switzerland or elsewhere?

From a Swiss perspective, the applicable succession law regarding real property forming part of an estate is determined under the rules set out in question 5.1 above. Swiss authorities are, however, not the competent authorities for inheritance matters to the extent real property located abroad is concerned if the country of location claims exclusive jurisdiction for real property in its territory. The country of *situs* may apply a different succession law in accordance with its own conflict of laws rules without prejudice to the recognition of acts of the foreign competent authority in Switzerland.

6 Trusts and Foundations

6.1 Are trusts recognised in Switzerland?

Yes, trusts are recognised in Switzerland. Switzerland is a signatory of the Hague Convention on the Law Applicable to Trusts and on their Recognition.

6.2 If trusts are recognised in Switzerland, how are they taxed in Switzerland?

Switzerland, although recognising trusts, does not know the concept of trusts in domestic law. Therefore, the Swiss tax laws do not have specific rules regarding trusts. The Swiss cantonal and federal tax authorities have, however, come to an agreement regarding the taxation of trusts. This agreement is not legally binding but most cantonal tax authorities and the Swiss Federal Tax Administration have committed themselves to follow the agreed rules.

The Swiss tax laws do not provide for taxation of a trust as such or of the trustee. Therefore, taxes, if any, are levied at the level of the settlor of a trust or at the level of the beneficiaries. For the purpose of taxation, the tax authorities differentiate between revocable trusts, irrevocable discretionary trusts and irrevocable fixed interest trusts.

Revocable trusts are disregarded for Swiss tax purposes. Trusts may easily be considered revocable under the rules in place. The income and capital of the trust are taxed at the level of the settlor. Distributions to beneficiaries are qualified as gifts and may be subject to gift tax if the settlor is resident in Switzerland at the time of the distribution and the gift is not exempted due to a specific relationship between settlor and beneficiary.

In principle, irrevocable discretionary trusts are taxed the same way as revocable trusts and their capital and income is attributed to the settlor for tax purposes. There is, however, a special treatment of

trusts settled by a settlor who was not a Swiss tax resident at the time of the establishment of the trust. The trust assets cannot be attributed to the settlor or the beneficiaries. Contributions are considered as gifts but no gift tax arises if the settlor is foreign resident at the time of the gift. Subject to the rules of the “lump sum” taxation, distributions to Swiss resident beneficiaries are subject to income tax unless it can be shown that a distribution consists of trust capital. Capital may only be distributed tax free after distribution of all income. No wealth tax is levied on the trust fund.

The settlement of assets on an irrevocable fixed interest trust is considered a gift to each individual beneficiary and is subject to gift tax if the settlor is a Swiss resident and to the extent gifts to specific beneficiaries are not exempted by law. The trust fund is attributed to the beneficiaries in proportion to their entitlement and the Swiss resident beneficiaries are subject to wealth tax on their share. Income is also taxed at the level of the beneficiaries and is taxable upon the Swiss resident beneficiary obtaining an absolute entitlement to the income or a share thereof. Capital distributions are tax-free. To the extent income consists of capital gains, it is also tax-free.

6.3 If trusts are recognised, how are trusts affected by succession and forced heirship rules in Switzerland?

Swiss substantive law provides for forced heirship rules. Forced heirship rules exist for the benefit of the descendants, the spouse and the parents of the deceased and may, depending on the constellation in each individual case, attach to up to 75% of the estate. For purposes of determining the quota of an estate subject to forced heirship rules, certain *inter vivos* dispositions of the deceased have to be taken into account. This includes, among others, gifts which were freely revocable by the deceased or gifts made within a period of five years before his death. Dispositions made with the purpose of circumventing forced heirship rules have to be taken into account without temporal limitation. To the extent the entitlement of a person under the forced heirship rules is violated by such *inter vivos* dispositions, the heirs concerned may claw back assets disposed of by the deceased up to the amount required to cover the entitlement of the forced heirs.

The Swiss forced heirship rules cannot be derogated from by a voluntary act and are, therefore, also applicable to trusts. This is based on Article 15 of the Hague Convention on the Law Applicable to Trusts and on their Recognition. If the deceased has settled assets on trust during his or her lifetime, such assets may have to be taken into account for the determination of the forced heirship entitlement and the transfer to the trustee of the assets may be subject to claw back claims of the heirs.

6.4 Are foundations recognised in Switzerland?

Yes, foundations are recognised unless their establishment is abusive. As a civil law concept, foundations are also part of Swiss law. The use of Swiss foundations for the administration of private wealth is, however, limited.

6.5 If foundations are recognised, how are they taxed in Switzerland?

As foundations have legal personality, foundations are themselves subject to profit tax and capital tax to the extent they are resident in Switzerland for tax purposes. If the conditions are fulfilled, a Swiss foundation may be subject to a separate regime of taxation, as a

holding company. Swiss charitable foundations are tax exempt. A foundation is charitable if its funds may irrevocably and exclusively be applied for charitable purposes. Moreover, the foundation has to show actual charitable activity. A purpose is charitable if it is of general interest such as activities in the areas of culture, ecology, education, science, health and humanitarian activities.

The capital and income of foreign foundations may be taxable at the level of the founder if the Swiss tax laws are abusively circumvented. Finally, contributions to foundations by a Swiss resident grantor may be subject to gift tax.

6.6 If foundations are recognised, how are foundations affected by succession and forced heirship rules in Switzerland?

The considerations listed under question 6.3 above also apply to foundations. The transfer of assets to a foundation *inter vivos* is subject to the forced heirship rights of the heirs entitled to a forced heirship share. The heirs may, under certain circumstances, claw back donations of the deceased exceeding the freely disposable part, i.e. the part of the estate to which no forced heirship rights are attached.

7 Immigration Issues

7.1 What restrictions or qualifications does Switzerland impose for entry into the country?

a) General remark

Swiss immigration law distinguishes between citizens of the European Union (EU) and of the Member States of the European Free Trade Association (EFTA) and citizens of other countries. As far as residency is concerned, citizens of Romania and Bulgaria which became Members of the EU in 2007 are still to be treated as non-EU citizens.

Citizens of EU and EFTA Member States benefit from the bilateral treaties with the EU regarding the free movement of persons which substantially facilitate immigration.

b) Temporary visitors

A visitor may stay up to 3 months in any aggregate period of 6 months without the need to obtain a residence permit but only if he or she does not intend to work in Switzerland for more than 8 days in any 12-month period. If these limits are exceeded, a residence and work permit must be obtained. If the applicant is not a citizen either of the EU or the EFTA, this permit must be obtained in advance of his or her arrival.

c) Residence and work permits - general rules

Unless the applicant is a temporary visitor or falls into one of the special categories referred to below, the applicant will not be allowed to live and work in Switzerland unless he or she first obtains a residence and work permit. Non-EU and non-EFTA citizens, so-called third country citizens, in general are only allowed to live and work in Switzerland if they are either urgently needed or well qualified. Such permits are issued under a quota system with each canton and the federal authorities being assigned a specific number of permits that can be granted in any year. Because of high demand for foreign employees in most cantons, and particularly in Zurich, Geneva and Vaud, the number of permit applications substantially exceeds the available cantonal quotas. Consequently, preference is given by the relevant authorities to applications from established businesses and new enterprises that can successfully demonstrate that the applicant has skills that will significantly

contribute to the commercial development of the city or the region concerned. Other favourable facts include the likely creation of local employment opportunities and contribution to the local economy, e.g. in the form of tax on profits of the new business or salary of its employees.

d) EU and EFTA citizens

(i) Living without working

Citizens of the EU or EFTA have the right to a residency permit (valid for an initial 5-year period and renewable thereafter) upon the following conditions:

- the applicant and his or her family are financially self-sufficient; and
- the applicant has valid health insurance covering all risks in Switzerland in respect of all family members accompanying the applicant.

There are no minimum or maximum age restrictions for EU and EFTA citizens. Children of the applicant and his or her spouse will, upon request, be included in the applicant's permit, if they are financially supported by the applicant, and, in any event, if the children are under the age of 21. The parents of the applicant or of his or her spouse can also be included in the applicant's permit, if financially supported by the applicant, even if they are not EU or EFTA citizens.

(ii) Living and working

The above rules also apply to EU or EFTA citizens who wish to carry on a business in or from Switzerland, either in a self-employed capacity or as an employee of their own company. In addition to the conditions mentioned above, the self-employed applicant must present an acceptable business plan, and should show, if possible, that his or her business will generate employment in the local market. The permit issued to the applicant will be drawn from the available quota.

If the EU or EFTA applicant meets the above conditions, then the grant of a permit is virtually automatic (however, often only for one year at first, due to a lack of available units in the quota). As a result of the liberal immigration rules coupled with the favourable tax system, Switzerland has become a very attractive destination for EU and EFTA citizens regardless of their age and professional activity.

7.2 Does Switzerland have any investor and other special categories for entry?

Switzerland has attractive immigration rules for non-EU and non-EFTA retirees and "young retirees" which can be summarised as follows:

(i) Non-EU and non-EFTA retirees

Non-EU or non-EFTA citizens wishing to retire in Switzerland, and not intending to work in or from the country, can obtain a residency permit when the following cumulative conditions are satisfied: the applicant must be over 55 of age; have close ties to Switzerland; abstain from any gainful activity; genuinely transfer the centre of his or her interests to Switzerland; and have sufficient financial resources (including adequate health insurance) for the applicant and the accompanying family members.

Even if all the above conditions are met, the grant of a permit remains fully discretionary. The cantonal authorities will evaluate the overall economic, financial and fiscal importance of the grant of a permit. For the Federal Immigration Authorities the most important factor would rather be the intensity and duration of previous links of the applicant to Switzerland.

As a general rule, the applicant will be required to resign from any directorships in foreign and Swiss companies, although he or she will be permitted to remain as director of any passive

investment companies, the sole purpose of which is to manage family assets. The spouse and children under the age of 18 of the applicant will, upon request, be included in the applicant's residence permit. Whether the parents of the applicant or of his or her spouse will be included in the permit will be decided individually upon the merits of the case. In any event, it will be necessary to show that they personally have sufficient means (including adequate health insurance), or are adequately supported by the applicant or his or her spouse. It will also help if they have no close relatives abroad, and intend to spend their old age with the applicant's family.

The residence permit will be granted and reviewed on a yearly basis as long as the original conditions are still met, and the retiree maintains a regular presence in the family home in Switzerland. The authorities do not routinely investigate the observance of the rule, but it is not unusual for the retiree to be asked to sign a written confirmation when applying for renewal of the permit.

(ii) "Young retirees" retiring from third countries (outside the EU/EFTA)

Switzerland offers foreigners who do not fulfil the conditions required for ordinary retirees (see above), either because they are under 55 years of age or because they have no connection to Switzerland, the possibility of obtaining a residency permit in Switzerland while still exercising a certain degree of professional activity outside the country. Under this procedure, and with the support of the relevant canton, the Federal Immigration Office may grant a residence permit on the basis of "the preponderant cantonal fiscal interests". It is up to the cantons to determine the amount of tax revenues they expect to collect. Under this regime, which requires negotiation of a "lump sum" tax agreement, Switzerland intends to facilitate the arrival of wealthy foreigners from third countries who as "young retirees" intend to establish their home in Switzerland with their family, while still exercising a part time activity abroad.

7.3 What are the requirements in Switzerland in order to qualify for nationality?

In order to qualify for Swiss nationality through the ordinary naturalisation procedure, the following cumulative requirements must be met: integration into the Swiss way of life; familiarity with Swiss habits, customs and traditions; compliance with the Swiss rule of law; and, presents no danger to Switzerland's internal or external security. Further, the applicant must have resided in Switzerland for at least 12 years in total, of which 3 were during the last 5 years before filing the application request. If spouses file a joint request for naturalisation, and one of the spouses meets the above requirements, it is sufficient that the other spouse has been resident in Switzerland for at least 5 years of which one year was immediately before filing of the application. In such case the marriage must also have survived for more than 3 years. Cantonal and communal law may establish additional requirements.

A foreigner may, after marrying a Swiss citizen, apply for simplified naturalisation, if he or she has lived in Switzerland for a total of 5 years (of which one year was immediately before the application request) and is married with the Swiss citizen for more than 3 years. Simplified naturalisation further requires that the applicant is well integrated, compliant with the Swiss rule of law and presents no danger to Switzerland's internal or external security.

7.4 Are there any taxation implications in obtaining nationality in Switzerland?

The decision of the Swiss authorities regarding granting nationality

triggers fees which, by law, cannot exceed the costs for the application proceeding. In general, the aggregate fees for the ordinary naturalisation procedure are in the range of Swiss Francs 1,500 to 2,500. Besides these fees, no special taxes are raised in connection with naturalisation.

8 Taxation of Corporate Vehicles

8.1 What is the test for a corporation to be taxable in Switzerland?

Legal entities are subject to Swiss taxation if their statutory seat or effective place of management is located in Switzerland. The statutory seat is registered in the commercial register. The effective place of management is considered the place where the essential business decisions are made and management is located.

Legal entities may also be subject to taxation in Switzerland as a result of an economic connection such as participation in a business, permanent establishment, or real property located in Switzerland. A permanent establishment is considered a permanent place of business where part of the business of the company is performed and includes branch offices, factories, workshops, sales offices, etc.

8.2 How are branches of foreign corporations taxed in Switzerland?

Profits of Swiss permanent establishments of foreign companies are subject to taxation in Switzerland. The tax is based on the income and capital allocated to the Swiss permanent establishment on the basis of a separate profit and loss statement and balance sheet. Normally, the tax is assessed using the so-called direct method; without regard to the total income and total capital of the foreign company. However, a number of Swiss double taxation treaties include a reservation in this regard and allow an allocation based on the indirect method i.e. based on a proportional allocation of profit and capital.

9 Tax Treaties

9.1 Has Switzerland entered into income tax and capital gains tax treaties and, if so, what is their impact?

Switzerland has entered into more than 90 double taxation treaties dealing with income tax and capital gains tax. Half of the treaties also cover wealth tax. The double taxation treaties allocate taxing jurisdiction with regard to persons domiciled or residing in a treaty state and contain rules avoiding double taxation. Under Swiss law double taxation treaties have priority over domestic tax laws. Double taxation treaties however cannot create an obligation to pay taxes, since such an obligation must always be based on domestic tax laws. Double taxation is avoided by allocating the object of taxation such as income, dividend, interest etc. to the jurisdiction of one treaty state for exclusive taxation or, if no exclusive taxation is agreed upon, limits the taxation by one treaty state. In case of limitation of taxation either the exemption method or the credit method is applied. In case a person is resident in Switzerland, the exemption method applies except for dividends, interest and royalty income which are taxed in the state of the source. Double taxation treaties usually grant the right to claim a refund in full or in part of tax withheld at source.

9.2 Do the income tax and capital gains tax treaties generally follow the OECD or another model?

Most Swiss double taxation treaties are based on the OECD model agreement. Pursuant to a recent decision of the Swiss Government, Switzerland has accepted Article 26 of the OECD Model Treaty, permitting exchange of information on request in proper form.

9.3 Has Switzerland entered into estate and gift tax treaties and, if so, what is their impact?

Switzerland has entered into approximately 12 double taxation treaties relating to estate and gift taxes. Most double taxation treaties only deal with estate taxes and are usually very old agreements.

9.4 Do the estate or gift tax treaties generally follow the OECD or another model?

As most agreements are very old, they do not follow the OECD model.



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Dr. Stefan Breitenstein graduated from the Law School of the University of Zurich and continued his legal education at the College of Europe in Brussels where he received the "*Diplôme des Hautes Etudes Européennes*". After his admission to the Zurich Bar he completed his postgraduate studies at the University of Zurich with a Dr. iur. and received an LL.M. from Harvard Law School in 1988. He returned to Lenz & Staehelin in Zurich where he became a partner in 1994. He has a broad private client, corporate, banking and finance practice and advises regularly on international and domestic transactions, including, in particular, financial regulatory matters. He heads the private client group of Lenz & Staehelin's Zurich office and is co-chairman of the banking law practice group of the Zurich Bar Association.



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