



# ICLG

The International Comparative Legal Guide to:

## Private Client 2017

**6th Edition**

A practical cross-border insight into private client work

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## EDITORIAL

Welcome to the sixth edition of *The International Comparative Legal Guide to: Private Client*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of private client work.

It is divided into two main sections:

Nine general chapters. These are designed to provide readers with a comprehensive overview of key issues affecting private client work, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in private client laws and regulations in 28 jurisdictions.

All chapters are written by leading private client lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Jonathan Conder and Robin Vos of Macfarlanes LLP for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at [www.iclg.co.uk](http://www.iclg.co.uk).

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# Switzerland

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## 1 Pre-entry Tax Planning

### 1.1 In your jurisdiction, 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. Gift and estate tax is levied by the canton of residence of the donor/deceased. For the 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 is 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 to this is made in question 3.1 below.

### 1.2 In your jurisdiction, what pre-entry income and capital gains tax planning can be undertaken?

The “lump sum” or “forfait” tax system of Switzerland affords to foreign citizens coming to live in Switzerland a number of tax planning opportunities and in many cases necessitates a tailor-made structuring of 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, 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. In case of a married couple, both spouses need to fulfil the conditions for taxation on a “lump sum” basis. 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; healthcare; 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 seven times the annual rent paid for the main accommodation occupied by the taxpayer and his family, or, if the taxpayer owns his own accommodation, seven times the rental value of that property.

There have been some political movements to abolish this special tax regime on the level of a number of cantons as well as on the federal level. The canton of Zurich and four other cantons abolished the “lump sum” tax system for cantonal and municipal taxes. In some of the cantons with a traditionally high number of taxpayers taxed on a “lump sum” basis as well as on federal, the voters have backed the special tax regime with a clear majority. In other cantons, the continuation of the special tax regime has not been questioned at all. Also on the federal level, the voters have turned down a popular initiative to abolish the “lump sum” taxation and it is not expected that serious attempts to abolish the tax regime will be made in the near future. This provides tax payers benefitting from taxation on a “lump sum” basis with increased legal certainty.

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 three 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. For federal income tax, a threshold of CHF 400,000 applies. 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 “forfait” tax. Some treaties (including those with Austria, Belgium, Canada, Germany, Norway 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. As opposed to other countries offering similar special tax regimes, taxation on a “lump sum” basis is available continuously without any time limit. The “lump sum” tax system applies only to income and net wealth tax, not to inheritance taxes.

### 1.3 In your jurisdiction, 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 or habitual residence relevant in determining liability to taxation in your jurisdiction?

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, subject to the taxation on a “lump sum” basis further described in question 1.2 above. The concept of domicile as applied in the UK is not relevant for tax purposes in Switzerland.

### 2.2 If domicile or habitual residence 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 your jurisdiction?

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.

### 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 your jurisdiction?

Nationality is not a relevant criterion to establish tax liability in Switzerland.

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

Please see the answer to question 2.5 above.

### 2.7 What other connecting factors (if any) are relevant in determining a person's liability to tax in your jurisdiction?

An individual becomes subject to limited taxation if he or she: (a) owns a business in Switzerland; (b) maintains a business establishment in Switzerland; (c) owns real property in Switzerland; or (d) trades or brokers real properties located in Switzerland. Similarly, non-resident individuals pursuing an economic activity in Switzerland, acting as board members of Swiss entities, owning or benefiting from debts secured by properties in Switzerland or receiving pensions or similar payments from Swiss sources are subject to limited taxation in Switzerland; whereby in most of these cases, taxes are withheld on the gross income received from the relevant source.

## 3 General Taxation Regime

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

In Switzerland, in general, taxes are assessed on three levels: federal; cantonal; and communal. There is no gift and estate tax on the federal level. 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 from parents to direct descendants. The canton of Lucerne does not levy any gift tax. Gifts and bequests to unrelated persons are progressive in most cantons 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 residence of the deceased, respectively the donor. In the case that the deceased had his or her last residence in Switzerland, the entire worldwide estate, with the exception of foreign real property and assets belonging to a foreign permanent establishment, 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 resident.

### 3.2 How and to what extent are persons who become established in your jurisdiction liable to income and capital gains 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, 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 46%; however, in certain cantons, such as the canton of Schwyz and the canton of Zug, total rates are substantially lower (for the city of Zug the current rate is approximately 23%, the lowest total tax rate in the canton of Schwyz is approximately 22%).



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 reduced taxation.

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 from employment.

Capital gains realised upon disposal of privately held assets are tax free on the federal level as well as on the cantonal and communal level, except for gains on the sale of real estate, which are taxed on the cantonal and communal level.

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 63%. Normally, the tax rate applicable to real estate capital gains varies between approximately 3% (for very long holding periods) and 25%. Disposals of 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.

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.

### **3.3 What other direct taxes (if any) apply to persons who become established in your jurisdiction?**

Cantons and municipalities levy wealth taxes on the worldwide net assets (market value of the assets minus 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 0.11% and 1.03%. Certain cantons allow further deductions.

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 0.02% and 0.35%.

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 normally 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 the 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 the 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 your jurisdiction?**

At 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, do 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.

### **3.5 Are there any anti-avoidance taxation provisions that apply to the offshore arrangements of persons who have become established in your jurisdiction?**

As a general rule, Swiss tax laws respect off-shore arrangements of persons who are a tax resident in Switzerland. There are, however, two caveats to this general rule.

If off-shore entities are managed from Switzerland, they are treated for tax purposes like companies established in Switzerland. Hence, if an off-shore company is managed from Switzerland, it is respected as a legal entity but the fact that such a company is incorporated in an off-shore jurisdiction is disregarded. Consequently, it is subject to unlimited taxation in Switzerland for profit tax, capital tax and withholding tax purposes like a Swiss incorporated company.

The second caveat relates to the general principle of tax avoidance applied by the Swiss tax authorities. If an off-shore arrangement has no economic justification (i.e., a mere letterbox company with no substance at the place of incorporation) but merely appears to be a means to avoid Swiss taxation, Swiss tax authorities will disregard such arrangement as a whole and tax the Swiss resident owner of such arrangement as if he or she directly owned the assets formally held by the off-shore arrangement.

### **3.6 Is there any general anti-avoidance or anti-abuse rule to counteract tax advantages?**

There is no statutory general anti-avoidance or anti-abuse rule in Swiss tax law. However, in a leading case decided in 1933, the Federal Supreme Court has adopted a general anti-avoidance doctrine to counteract abusive tax advantages. According to this case law, the legal arrangements are disregarded if the following cumulative conditions are met: (i) the legal form chosen by the taxpayer is unusual (objective element); (ii) the primary motive for this choice is to achieve tax savings (subjective element); and (iii) the legal form chosen would effectively lead to substantial tax savings (factual element).

In certain circumstances, specific statutory anti-abuse rules may apply to Swiss tax residents making arrangements to convert profits accumulated in companies into tax-free capital gains by selling a qualified participation in a company comprising freely distributable

reserves, or into paid-in capital which is not subject to income tax upon repayment by contributing a qualified participation into the paid-in capital of a holding company at a value exceeding the paid-in capital of the transferred shares.

The Swiss withholding tax law provides a specific anti-avoidance provision with regard to tax refunds. Article 21 paragraph 2 of the Federal Withholding Tax Act stipulates that a claimed refund will be refused if such refund would permit tax avoidance. The Federal Tax Administration has announced that this provision is also applicable in an international context.

## 4 Taxation Issues on Inward Investment

### 4.1 What liabilities are there to tax on the acquisition, holding or disposal of, or receipt of income from investments in your jurisdiction?

Switzerland levies a withholding tax on income from debentures and similar debt instruments issued by Swiss entities, shares, participation certificates and bonus shares of Swiss entities, units of Swiss collective investment schemes and Swiss bank accounts. Entities having their principal place of management in Switzerland are also considered being Swiss entities for this purpose. The withholding tax is charged at 35% and is withheld at source. Investors resident in jurisdictions that have entered into double taxation agreements may benefit from reduced withholding tax rates or, in certain circumstances, from a 0% withholding tax rate.

An individual becomes subject to limited taxation in Switzerland if he or she owns a business in Switzerland not being run in the form of a legal entity, maintains a business establishment in Switzerland or owns real property in Switzerland. Income generated by these investments is subject to income tax and net wealth tax at the ordinary income tax rate calculated on the basis of the worldwide income and net wealth.

The cantons levy real estate property gains tax on the gains realised in connection with a sale of Swiss real property. Certain cantons levy property taxes on the ownership and the usufruct of Swiss real property. In certain cantons, the sale of real property located in the canton is subject to real property transfer tax. Please see question 3.3 for further details on these taxes.

### 4.2 What taxes are there on the importation of assets into your jurisdiction, 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 such 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 that are not part of the normal household assets, 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.

### 4.3 Are there any particular tax issues in relation to the purchase of residential properties?

Under the currently applicable laws, residential property used as a permanent home can only be acquired by persons who have a valid

residence permit. The acquisition of vacation homes (whether acquired by a Swiss or foreign resident non-Swiss citizen) is subject to a quota system.

In most cantons the transfer of real property is subject to real estate transfer tax at rates varying from canton to canton (the range is normally 1% to 3% of the acquisition price). In addition, the acquisition of real property will trigger notary fees and registration fees (land register) which are both based on the acquisition price of the property.

During the period of ownership, owners of real property in Switzerland are subject to limited taxation (income tax and net-wealth tax) in the canton where the real property is located for the value of the property and the income deriving from such property.

The disposition of Swiss real property is, again, subject to real estate transfer tax as well as notary and registration fees, as described above. In addition, if a gain arises upon a disposition of Swiss real property, such gain is subject to a special cantonal real estate capital gains tax. The rates of such tax vary from canton to canton. In order to prevent speculation, short-term holding triggers increased taxation which can go up to 63%. Normally, the tax rate applicable to real estate capital gains varies between approximately 3% (for very long holding periods) and 25%. Majority shareholdings in real property companies are also subject to real property capital gains tax as the share transfer constitutes an economic transfer of the ownership of the property.

## 5 Taxation of Corporate Vehicles

### 5.1 What is the test for a corporation to be taxable in your jurisdiction?

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 limited 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.

### 5.2 What are the main tax liabilities payable by a corporation which is subject to tax in your jurisdiction?

Corporations taxable in Switzerland are subject to a profit tax and on the cantonal level also to a capital tax. The profit tax rates on the cantonal level vary considerably and the effective tax rate lies in the range of approximately 11.3% to 24.4%, depending on the canton and the municipality. The taxes payable by the corporation may be deducted from the taxable income as expenses. Losses may be carried forward for seven years and offset against future profits. Profits of holding companies, domiciliary companies and companies mainly engaging in business activities abroad and with marginal business activities in Switzerland are subject to significantly lower effective tax rates on the cantonal level and certain profits may be fully tax exempt. Certain cantons such as the canton of Nidwalden also offer other tax privileges such as an IP box. The special tax regimes are, however, currently under review

due to international developments and initiatives but it is expected that generous grandfathering rules will apply to entities taxed under such special tax regime. It is also expected that corporate tax rates will be reduced significantly to mitigate the impact of the proposed abolishment of the special corporate tax regimes.

### 5.3 How are branches of foreign corporations taxed in your jurisdiction?

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.

## 6 Tax Treaties

### 6.1 Has your jurisdiction entered into income tax and capital gains tax treaties and, if so, what is their impact?

Switzerland has entered into more than 100 double taxation treaties dealing with income tax and capital gains tax. More than 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 to the taxation by one treaty state. In the case of a limitation of taxation, either the exemption method or the credit method is applied. In the case that 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.

### 6.2 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 decision of the Swiss government in 2009, Switzerland has accepted Article 26 of the OECD Model Treaty, permitting the exchange of information on request in proper form.

### 6.3 Has your jurisdiction entered into estate and gift tax treaties and, if so, what is their impact?

Switzerland has nine double taxation treaties relating to estate taxes. These double taxation treaties do not deal with gift taxes and are usually very old agreements. There are no double taxation treaties relating to gift taxes.

### 6.4 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.

## 7 Succession Planning

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

The Swiss conflict of laws rules are set out in the Swiss Private International Law Act. In principle, the estate of a deceased person who was resident in Switzerland at the time of his or her 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 or her 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 *favor 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 the conclusion of the testamentary contract, notwithstanding that the testator may have been a Swiss resident at the time of his or her death. This does not, however, 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 person 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.

### 7.2 Are there particular rules that apply to real estate held in your jurisdiction 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 7.1 above. Swiss authorities are, however, not



the competent authorities for inheritance matters with regard to real property located abroad 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 law rules without prejudice to the recognition of acts of the foreign competent authority in Switzerland.

## 8 Trusts and Foundations

### 8.1 Are trusts recognised in your jurisdiction?

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

### 8.2 How are trusts taxed in your jurisdiction?

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 be considered revocable under the rules in place if the settlor has retained certain powers with respect to the trust even if they are technically irrevocable. 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 the settlor and the beneficiary.

In principle, irrevocable discretionary trusts are taxed in 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 a 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 the 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 that 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 a 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 that income consists of capital gains, it is also tax-free.

### 8.3 How are trusts affected by succession and forced heirship rules in your jurisdiction?

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 up to 75% of the estate. For the 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 that 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 (except if the forced heirs agree in the form of a notarial deed) 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.

### 8.4 Are foundations recognised in your jurisdiction?

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.

### 8.5 How are foundations taxed in your jurisdiction?

As foundations have legal personality, foundations are themselves subject to profit tax and capital tax to the extent that they are resident in Switzerland for tax purposes (the applicable tax rates are normally half of the corporate tax rates). 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 a gift tax.

### 8.6 How are foundations affected by succession and forced heirship rules in your jurisdiction?

The considerations listed under question 8.3 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.

## 9 Matrimonial Issues

### 9.1 Are civil partnerships/same sex marriages permitted/recognised in your jurisdiction?

Swiss law provides for a registered civil partnership, the effects of which are similar to the legal effects of marriage. Civil partnerships validly concluded abroad can be recognised in Switzerland. Same sex marriages concluded abroad may be recognised in Switzerland as registered civil partnerships.

### 9.2 What matrimonial property regimes are permitted/recognised in your jurisdiction?

Swiss law provides for the matrimonial property regimes of participation in acquired property, community of property and separation of property whereby the participation in acquired property is the standard regime. The immigration of a married couple to Switzerland leads to the application of the regime of participation in acquired property with effect from the date of marriage if not agreed otherwise. Foreign matrimonial regimes may be recognised unless they are against the Swiss *ordre public*, provided the married couple agrees to maintain the matrimonial property regime applicable to them prior to immigration to Switzerland.

### 9.3 Are pre-/post-marital agreements/marriage contracts permitted/recognised in your jurisdiction?

Marital agreements are permitted and are required in the case a married couple does not wish to apply the standard matrimonial property regime of participation in acquired property. Marital agreements may be concluded pre-marriage as well as post-marriage with effect as of the date of the conclusion of the contract or with retroactive effect as per the date of marriage. Marital contracts concluded abroad under foreign law remain valid following immigration to Switzerland.

### 9.4 What are the main principles which will apply in your jurisdiction in relation to financial provision on divorce?

Swiss law differentiates between the dissolution of the marital property regime and post-marital maintenance payments. The marital property regime is dissolved upon divorce in accordance with the rules of the relevant regime. In the case of participation in acquired property, the wealth accumulated during marriage is divided and each spouse retains his or her individual property, i.e. wealth or items already owned when the marriage was concluded, as well as certain assets received thereafter (e.g. inheritance).

Post-marital maintenance is, in principle, independent from the result of the dissolution of the marital property regime. Post-marital maintenance payments are imposed if one spouse cannot reasonably be expected to provide for his or her own adequate maintenance, including an appropriate level of retirement provision. One of the main criteria to determine adequate maintenance is the standard of living during the marriage. The amount and duration of the post-marital maintenance also depends on the roles and tasks of each spouse during marriage, the duration of the marriage, the age and health of each spouse, the allocation of the care for any children, the education and the job prospects. In case of a change of circumstances, a request for adjustment of the maintenance payments may be made. Post-marital maintenance usually takes the form of monthly payments. Separate alimony payments are fixed for the maintenance of any common children.

## 10 Immigration Issues

### 10.1 What restrictions or qualifications does your jurisdiction 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 work permits are concerned, citizens of Romania and Bulgaria, which became Members of the EU in 2007, were to be treated as non-EU citizens until May 31, 2016. For the purposes of immigration, Croatian citizens are not treated as 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.

However, in February 2014, the Swiss voters adopted a popular initiative aimed at stopping mass immigration. As a consequence, the immigration into Switzerland by foreign nationals must be limited by annual quotas. The quotas are to apply to all categories of immigrants. The new provision in the Swiss constitution requires the Swiss government to renegotiate any international agreements with conflicting provisions including, in particular, the bilateral treaties with the EU regarding the free movement of persons within three years. In addition, the Swiss parliament and the Swiss government have to adopt the necessary laws to implement the new constitutional provision within the same period of time. Until then, the current rules will continue to apply.

#### b) Temporary visitors

A visitor may stay up to three months in any aggregate period of six 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 eight 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”, are, in general, only allowed to live and work in Switzerland if they are urgently needed and 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 the 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 factors 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. Investors, entrepreneurs and renowned individuals engaged in art, sports or science may benefit from certain facilitations with respect to some of the preconditions for a residence and work permit.

## 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 five-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, in principle, 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.

If the EU or EFTA applicant meets the above conditions, then the grant of a permit is virtually automatic.

## 10.2 Does your jurisdiction have any investor and/or 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 years 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 a 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 to obtain 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 the 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.

## 10.3 What are the requirements in your jurisdiction 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 to present 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 three were during the last five 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 a resident in Switzerland for at least five years of which one year was immediately before filing of the application. In such cases, the marriage must also have survived for more than three 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 five years (of which one year was immediately before the application request) and is married with the Swiss citizen for more than three 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.

## 10.4 Are there any taxation implications in obtaining nationality in your jurisdiction?

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 CHF 1,500 to 2,500. Besides these fees, no special taxes are raised in connection with naturalisation. However, persons taxed on a "lump sum" basis will not be eligible for the special tax regime and will be subject to ordinary taxation on income and net wealth.

### 10.5 Are there any special tax/immigration/citizenship programmes designed to attract foreigners to become resident in your jurisdiction?

Except for the special categories for residence permits set out in the answer to question 10.2 above, there are no special programmes to attract foreigners to become resident in Switzerland.

## 11 Reporting Requirements/Privacy

### 11.1 What automatic exchange of information agreements has your jurisdiction entered into with other countries?

Switzerland has committed to the automatic exchange of information and to exchange information in 2018 for the first time. The first exchange will comprise information relating to the year 2017. Switzerland has signed agreements regarding the exchange of information with the EU and several other partner states. The agreements with the EU and with Australia have already been ratified. The Swiss Federal Council has stated its intention to procure the conclusion of further agreements on the automatic exchange of information.

### 11.2 What reporting requirements are imposed by domestic law in your jurisdiction in respect of structures outside your jurisdiction with which a person in your jurisdiction is involved?

Swiss tax residents are required to file an annual tax return. Information regarding the assets held in a structure abroad, as well as the income earned by such structures, have to be reported in the tax return to the extent that the relevant person is subject to Swiss tax on these amounts in accordance with the answers to questions 8.2 and 8.5 above. In addition, shares in foreign companies have to be declared as part of the worldwide net wealth. There are no additional reporting requirements in respect of structures outside Switzerland.

### 11.3 Are there any public registers of owners/beneficial owners/trustees/board members of, or of other persons with significant control or influence over companies, foundations or trusts established or resident in your jurisdiction?

Almost all types of legal entities and partnerships are required by law to register with the Swiss commercial register and in most cases are not validly established until the registration is completed. In the past, certain types of foundations, in particular family foundations, were not required to register in the commercial register. Due to a change of the relevant provisions of law, as of January 1, 2016, all types of foundations need to register with the commercial register. Existing foundations benefit from a transition period of five years for registration. The commercial register is publicly accessible.

Board members of legal entities, partners of partnerships and certain authorised signatories have to be registered in the commercial register and are individually listed on the extract of the relevant entity even after they have resigned from their function. In the case of limited liability companies, partnerships limited by shares, limited partnerships and partnerships with commercial activity and also the legal owners (partners, shareholders) are individually listed in the commercial register. The shareholders of companies limited by shares are, however, not recorded in a public register in Switzerland. Further, there is no register of beneficial owners.

As Swiss law does not know the common law concept of trusts, trusts are not registered in any public register in Switzerland, notwithstanding the fact that a foreign trust may have a Swiss resident trustee. The same is true for Swiss resident trustees of foreign trusts.



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