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Switzerland

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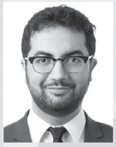

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1 Connection Factors

1.1 To what extent is domicile or habitual residence relevant in determining liability to taxation in your jurisdiction?

From a Swiss domestic tax standpoint, an individual is resident for tax purposes in Switzerland if he or she maintains a tax domicile or tax residence in Switzerland.

1.2 If domicile or habitual residence is relevant, how is it defined for taxation purposes?

An individual living in Switzerland with the intention to stay permanently in Switzerland establishes a tax domicile. According to Swiss civil law, a "domicile" is defined as the place where a person lives with the intention of staying permanently. This is where the individual's personal relationships are focused, where he or she regularly spends non-working hours, fosters friendships and family ties, and takes part in the social life of the community, i.e., where the centre of life interests is. A place of work, however, does not qualify as a tax domicile if the other conditions are not fulfilled.

1.3 To what extent is residence relevant in determining liability to taxation in your jurisdiction?

According to Swiss domestic tax laws, an individual is subject to unlimited tax liability in Switzerland on his or her worldwide income and wealth if he or she maintains tax residence in Switzerland.

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

An individual establishes tax residence, irrespective of short interruptions, if a stay of a minimum of 30 days is combined with a gainful activity (without such activity if the stay lasts a minimum of 90 days). The notion of short interruption is not defined. However, the Supreme Court considers that a weekend away cannot be considered a short interruption. An individual who is domiciled abroad but stays in Switzerland solely for educational or health reasons is not deemed resident in Switzerland for tax purposes.

1.5 To what extent is nationality relevant in determining liability to taxation in your jurisdiction?

Nationality is not relevant in determining tax liability. However, it can be relevant with regard to taxation at source. Taxation at source is not a tax in itself, but a taxation procedure according to which the taxes are not directly paid by the taxpayers themselves, but by the employer. This procedure applies – under some conditions – to foreign citizens.

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

See question 1.5 above.

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

People who are resident outside Switzerland have limited tax liability if they are required to pay tax as a result of economic ties to Switzerland (e.g., real property, business premises, etc.). Moreover, receiving gifts from a donor resident in Switzerland or receiving real property located in Switzerland as a gift triggers gift tax liability (see question 2.1).

1.8 Have the definitions or requirements in relation to any connecting factors been amended to take account of involuntary presence in (or absence from) your jurisdiction as a result of the coronavirus pandemic?

The Organisation for Economic Co-operation and Development (OECD), an international policy organisation, issued tax guidance on 3 April 2020 to governments related to the determination of tax residence during the COVID-19 pandemic. Accordingly, if an individual is stranded for a period in a country that is not his or her country of residence due to travel restrictions and quarantine measures, the OECD Secretariat's general view is that, under the bilateral tax treaty between the two countries, the individual's tax residence will not change due to such temporary dislocation.

The Swiss tax authorities have not yet published their views on the determination of Swiss tax residence during the pandemic, except as regards cross-border commuters. Indeed, France and Switzerland have concluded an agreement according to which working-from-home days due to COVID-19 shall not affect the cross-border commuter status of persons and, hence, change the taxation of these persons (in other words, the cross-border commuter taxation remains unaltered). Currently, no such agreement is in place with Germany. However, according to the information received by several cantonal tax administrations, there should be no change as a result of increased working-from-home days due to COVID-19 regarding cross-border commuters from Germany.

2 General Taxation Regime

2.1 What gift, estate or wealth taxes apply that are relevant to persons becoming established in your jurisdiction?

In principle, an individual becomes liable to Swiss gift or estate tax upon:

- receiving a gift or bequest from a resident of Switzerland; or
- receiving real property located in Switzerland.

Gift and estate taxes are only levied by the cantons. In a few cases, they are also levied by the communes. Only the cantons of Schwyz and of Lucerne do not levy such taxes. In all cantons, gifts and bequests to spouses and civil partners are exempt from tax. Gifts or bequests to descendants are exempt from tax in all cantons except for Vaud, Neuchâtel and Appenzell Innerrhoden.

Gifts or bequests from a person with residence in Geneva who is taxed under the lump-sum taxation regime (see question 2.2) are never tax-free, even if received by descendants, the spouse or the civil partner of this person.

The tax rate is progressive and reflects the degree of kinship involved as well as the size of the gift or bequest. The rates vary from 0% to over 50%.

Switzerland imposes a tax on an individual's net wealth, defined as worldwide assets minus debts (including mortgages, loans, advances and private borrowings). All cantons levy a tax on net wealth, but there is no such tax at the federal level.

The tax rates are progressive and vary depending on the individual canton and commune. The rates usually range between 0.1% to a maximum of 1% of the net assets.

A tax shield is available in several cantons, thereby mitigating the impact of wealth tax.

2.2 How and to what extent are persons who become established in your jurisdiction liable to income and capital gains tax?

Income taxes in Switzerland are levied at federal and cantonal/communal levels. The tax rates vary depending on the relevant canton. Swiss tax rates generally progress gradually, and the top rates are modest by international standards. For example, the tax rates for a taxable income of CHF250,000 for a non-married person vary from 16.79% (Schwyz) to 33.53% (Neuchâtel).

Federal and cantonal/communal income tax applies, *inter alia*, to all income derived from compensation for work performed and from capital (both real and movable property).

It should be noted that foreign individuals who take up residence in Switzerland for the first time, or after an absence of more than 10 years, and who do not carry out any (dependent or independent) gainful activity in Switzerland, may choose to be taxed under a special regime called "lump-sum taxation". Under this regime, the taxable income and assets are assessed based on the taxpayer's expenditure.

Individuals' gains on the disposal of movable assets are not subject to income tax. However, specific rules apply to those individuals who trade in securities, art works or other assets frequently or in a professional capacity.

Private gains realised on the sale of real estate located in Switzerland are subject to a cantonal/communal capital gains tax. The tax is based on the amount of gain and depends on the period of ownership. The rates vary from canton to canton and range from 0% (e.g., in Geneva for periods of ownership of more than 25 years) to over 50% (very short periods of ownership).

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

At the federal level, a general consumption tax based on the system of net all-phase taxation with input tax deduction (value-added tax) is levied. The purpose of the tax is to tax non-business end use in Switzerland. Not all services are taxed at the same rate. The standard rate of 7.7% applies to most goods supplied and to nearly all services. Basic necessities, mainly food and drinks (excluding alcoholic drinks), medicines and also certain newspapers, magazines and books, are taxed only at the reduced rate of 2.5%. Overnight stays including breakfast are subject to the special rate of 3.7%.

Furthermore, if an individual occupies his or her own real property, a deemed rental value included in the taxable income for cantonal, communal and federal tax purposes is imposed, although there is no actual rental income. The amount is calculated based on a formula that takes into account factors such as the size and age of the property, etc. However, interest and maintenance costs are deductible.

The same treatment applies to real property located outside Switzerland. However, rental income and disposal of real property located outside Switzerland are taken into consideration only for determining the tax rate.

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

If a person is bringing in goods across the border for his or her own personal use or as gifts, they may be imported duty-free up to a value of CHF300. The duty-free limit can be used once a day per person, including children. If the duty-free limit of CHF300 is exceeded, VAT is payable on all goods.

A different (and significantly lower) duty-free limit applies to alcoholic beverages, tobacco products and certain agricultural products such as meat, milk and cream, fruit, vegetables, oils and fats that exceed certain maximum quantities.

Moreover, subject to some conditions, the personal belongings of a person relocating in Switzerland can be VAT-exempt.

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

There are no anti-avoidance provisions that apply specifically to offshore arrangements. However, domestic laws as well as

Supreme Court jurisprudence provide two rules that can mainly be applied by tax administrations in order to challenge offshore arrangements.

First, legal entities are taxable at the place of their seats or at the place of their effective management. Therefore, offshore entities effectively managed within Switzerland would be considered Swiss-based entities and tax liable in the country.

Second, the Supreme Court has established the general principle of tax avoidance (see question 2.6 below) that can be applied by tax administrations to deny the existence of the offshore arrangements, and to apprehend the situation as if the offshore arrangements were not in place.

2.6 Is there any general anti-avoidance or anti-abuse rule to counteract tax advantages?

The general anti-avoidance and anti-abuse rule applies when the following cumulative conditions are met: (i) the legal form chosen by the taxpayer appears to be unusual, or unsuitable to achieve the economic goal that the legal form is supposed to pursue; (ii) the legal form has been chosen arbitrarily and only to achieve tax savings; and (iii) the legal form leads to tax savings.

2.7 Are there any arrangements in place in your jurisdiction for the disclosure of aggressive tax planning schemes?

Domestic laws provide that tax administrations can reopen the taxation of a taxpayer if the taxation is incomplete due to unknown facts or tax offences. If the aggressive tax-planning schemes qualify as tax offences, domestic law provides the possibility of spontaneous disclosure. Spontaneous disclosure is subject to several conditions, such as the fact that the tax administration is not already aware of the incomplete taxation, and that the taxpayer fully cooperates with the reopening of the taxation. The effect of such spontaneous disclosure is the cancellation of criminal proceedings (usually equivalent of the cancellation of the fine); however, the unpaid taxes plus interest will remain due.

3 Pre-entry Tax Planning

3.1 In your jurisdiction, what pre-entry estate, gift and/or wealth tax planning can be undertaken?

Estate and gift taxes are levied at a cantonal level at the place of residence of the donor or deceased. As each canton can have its own rates, the pre-entry tax planning could include the choice of the residence. The same reasoning applies to wealth tax, the rates of which also depend on the place of residence of the taxpayer. Moreover, some cantons – for instance, Geneva – may provide for wealth tax exemptions that apply to personal furniture, art or scientific collections.

The settlement of a pre-immigration trust or the recognition of existing trusts by the Swiss tax authorities is frequently part of the pre-entry tax planning. Finally, one may apply with the competent cantonal authority for a tax ruling depending on the situation.

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

Entering into a lump-sum taxation agreement can be considered pre-entry income and capital gains tax planning. According to the lump-sum taxation regime, under some conditions, foreign taxpayers are taxed upon their expenses instead of their income. The minimum amount of these expenses – which constitutes the tax base – depends on the country of origin of the applicant. European Union (EU) nationals are subject to a lower minimum amount of expenses than nationals of third countries. In addition, it is possible to apply to cantonal tax authorities for a tax ruling regarding income and capital gains in specific situations. As a consequence of the entry into force of Brexit in January 2021, United Kingdom (UK) nationals no longer enjoy the benefits available to EU nationals. Therefore, the conditions for obtaining a lump-sum taxation regime for UK nationals are those applying to non-EU countries. Thus, from now on, UK applicants for the lump-sum taxation regime must be able to justify higher expenses than applicants from the EU, which is particularly relevant to applicants younger than 55 who cannot demonstrate close connecting factors to Switzerland.

3.3 In your jurisdiction, can pre-entry planning be undertaken for any other taxes?

The same considerations apply here (see questions 3.1 and 3.2). A tax ruling may be submitted to the Swiss Federal Tax Administration (SFTA) for some taxes, such as withholding tax or stamp duty tax.

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 made by a non-resident in your jurisdiction?

Non-residents are only taxed on Swiss-sourced income and wealth (limited tax liability), if among others they generate income allocated to a fixed place of business in Switzerland or through real estate located in Switzerland (see questions 1.7 and 4.3).

In the case of movable assets, withholding tax is levied at a rate of 35% on returns from bonds, shares, units in collective investment schemes or client assets with banks whose issuer or debtor is domiciled in Switzerland. The tax is paid by the distributing company and then deducted from the income distributed to the beneficiary.

Foreign residents are not *a priori* entitled to reimbursement of withholding tax, subject to a double tax treaty between Switzerland and the beneficiary's state of residence. In particular, foreign residents must be able to claim the benefits of the double tax treaty in place (if any) and, in practice, make an express request for reimbursement to the competent tax authorities of their state of residence.

Finally, stamp duty is levied on the transfer (if one of the parties qualifies as a securities dealer) or the issuance of Swiss companies' shares.

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

The importation of assets is subject to import VAT, custom and excise duties. Custom and excise duties can be reduced or exempted depending on the free trade agreement in force.

4.3 Are there any particular tax issues in relation to the purchase of residential properties by non-residents?

A transfer of real property may be subject to property transfer tax, depending on the canton. Moreover, the private gain arising from the disposition of Swiss real estate may be subject to a cantonal/communal capital gains tax, the rate of which varies from canton to canton according to the period of ownership (from more than 50% to 0%) (see question 2.2).

Also, a limited tax liability arises from the ownership of real estate located in Switzerland which is, in particular, subject respectively to (i) to wealth tax on the fiscal value of the property, and (ii) to income tax on its rental income or on its deemed rental value (see question 2.3). Other local taxes may apply depending on the canton or community where the property is located.

5 Taxation of Corporate Vehicles

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

Corporations are tax liable in Switzerland if the place of their seat or the place of their effective management is located in the country (see question 2.5 above). Limited tax liability can also arise from economic ties such as a permanent establishment (permanent place in which a part of the core business of the corporation is performed).

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

Corporations are taxable on their profit at both cantonal and federal levels, and on their capital at cantonal level.

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

The branches of a foreign corporation considered a permanent establishment of foreign companies are taxed on their profits and capital allocated to Switzerland. The profits and capital allocated to Switzerland are determined depending on tax treaties by the direct profits and capital arising from the branch, or the ratio of profit and capital *vis-à-vis* consolidated profits and capital of the corporation worldwide.

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 related (in particular but not only) to income tax and capital gains tax. Such treaties provide rules allowing for the avoidance or reduction of double taxation, and can be invoked by taxpayers before tax administrations and courts. In addition, tax treaties can be used by foreign tax administrations in order to obtain – under some conditions – relevant information about taxpayers. Similarly, Swiss tax administrations can use tax treaties to obtain relevant information from foreign jurisdictions.

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

The income tax and capital gains tax treaties applicable in Switzerland are based on the OECD model.

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

Switzerland has not entered into gift tax treaties, and has concluded fewer than a dozen treaties related to estate tax, including one with the UK. Their impact is very limited in practice.

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

Treaties related to estate tax do not follow any model in particular.

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?

According to Swiss private international law, the estate of a person who has his or her last domicile in Switzerland is governed by Swiss succession law, regardless of nationality (and place of origin) and the type of property and its location.

However, a foreign national domiciled in Switzerland may by last will subject his or her estate to the law of one of his or her national states. Such disposition shall become void if, at the time of death, he or she is no longer a national of that state or has become a Swiss national.

According to Swiss private international law, the form of a will is governed by the *erga omnes* Hague Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions.

According to Article 1 of the Convention, the form of a testamentary disposition is valid if it has been made according to the internal law of:

- the state in which the testator made the will;
- one of his or her national states;
- the state in which the testator had his or her domicile, whether at the time of making the will or at the time of his or her death;
- the state in which he or she had his or her ordinary residence, whether at the time of making the will or at the time of his or her death; or
- as far as real estate is concerned, the state in which it is located.

Wills made in accordance with the foregoing provisions are deemed to be valid from a Swiss point of view. Nevertheless, on the death of the testator and if the will has been written in a foreign language, it will need to be officially translated before it is presented to the Swiss authorities having jurisdiction over the deceased's estate.

To the extent that Swiss law is applicable to the succession, any person who has capacity and is at least 18 years old has the right to draw up a will disposing of his or her property in accordance with the limits and forms prescribed by law.

The testator may make his or her will in the form of a public deed or entirely in holographic form. In extraordinary circumstances, the will may also be made orally.

A will by public deed is made in the presence of two witnesses by a public official, notary public or other person authorised under cantonal law to conduct such business.

A holographic will must be written by the testator's own hand from start to finish, include an indication of the place, day, month and year at/on which it is drawn up, and be signed by the testator.

Where the testator is prevented from using any other form of will by extraordinary circumstances such as the imminent risk of death, breakdown in communications, epidemic or war, he or she is entitled to make a will in oral form before two witnesses. Without delay, the witnesses shall then convert the oral will into a deed with the assistance of the competent judicial authority.

7.2 Are there particular rules that apply to real estate held in your jurisdiction or elsewhere?

From a Swiss private international law perspective, Swiss authorities are competent with regard to real estate located in Switzerland. Swiss authorities have, in principle, jurisdiction over the worldwide estate of a deceased person who had his or her last domicile in Switzerland. However, regarding real estate located abroad, Swiss authorities remain competent only to the extent that the other country where the real property is located does not claim exclusive jurisdiction in that regard. Such country will apply its own conflict of law rules which may lead to another applicable law limited to the real estate located in its territory.

7.3 What rules exist in your jurisdiction which restrict testamentary freedom?

As such, individuals do not have restriction of disposition over their estate during their lifetime. One important question is what can be considered the individual's estate when this individual is married or has children.

During the marriage, within the limits of the law, each spouse administers and enjoys the benefits of his or her individual property (i.e., his or her own individual property and share of the jointly acquired property) and has power of disposal over it. If an asset is in the co-ownership of both spouses, neither spouse may dispose of his or her share in it without the other's consent, unless otherwise agreed. See question 9.2 below for details on Swiss matrimonial regimes.

Upon dissolution of the matrimonial property regime (either through death, divorce or in the event of a change of matrimonial property regime), accrued gains are divided between the spouses into two equal shares. The following are added to the property acquired during marriage (sort of clawback):

- the value of assets disposed of by one spouse, without consideration and without the other's consent, during the five years preceding the dissolution of the marital property regime, except for the usual occasional gifts; and
- the value of assets disposed of by one spouse during the marital property regime with the intention of diminishing the other's share.

The property acquired during marriage and the individual property of each spouse are divided according to their value at the time of the dissolution of the marital property regime.

In addition, Swiss substantive succession law provides that the heirs are the deceased's issue. Children inherit in equal shares. Predeceased children are replaced by their own issue at all degrees *per stirpes*. The surviving spouse or civil partner is entitled to one-half of the estate when in competition with the deceased issue. If there are no descendants, the surviving spouse or civil partner inherits three-quarters of the estate and the deceased's parents one-quarter. If the deceased's parents are predeceased, the surviving spouse or civil partner inherits the entire estate. If there are no descendants and no surviving spouse or civil partner, the deceased's parents inherit the entire estate. Moreover, the predeceased parents are replaced by their issue at all degrees *per stirpes*.

The free estate depends on the compulsory portions of the protected heirs. The protected heirs and their respective compulsory portions are as follows:

- for the descendants of a deceased: three-quarters of their statutory share;
- for the parents of a deceased: half of their statutory share (this only applies when the deceased has no issue); and
- for the surviving spouse or the civil partner of a deceased: half of their statutory share.

Nevertheless, such compulsory portions may be derogated by way of an inheritance contract to be entered into between the testator and the renouncing forced heirship heir.

Swiss succession law allows the protected heirs to claw back the gifts or legacies that are in breach of their compulsory portion, under certain conditions. Consequently, if protected heirs receive less than their compulsory share in the estate, they may file a claw-back claim to receive the balance of their compulsory portion. In the absence of such claim, a will drawn up in breach of forced heirship rights is not automatically invalid for this reason.

A change of law is foreseen in order to reduce the compulsory portions (including the abolition of the compulsory portion of the parents of the deceased) and to provide the testator with greater testamentary freedom. In addition, the surviving spouse will no longer benefit from forced heirship rights if divorce proceedings are pending at the time of the death. The surviving spouse currently benefits from forced heirship rights as long as the divorce judgement is not final. The new legislation will enter into force on 1 January 2023.

8 Trusts and Foundations

8.1 Are trusts recognised/permitted in your jurisdiction?

There is no Swiss substantial law on trusts and no such thing as a Swiss domestic trust. However, Switzerland is a party to the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition, which it ratified in 2007.

According to Swiss private international law, the law applicable to a trust is designated by the Convention. Consequently, Swiss courts or authorities must recognise a trust established in accordance with the law designated by the Convention, which meets the minimum standards prescribed by the Convention. Assuming that the trust is valid under the applicable common law and the assets in trust have been validly transferred into it (according to the legal requirements of every relevant jurisdiction), the trust shall be recognised in Switzerland.

8.2 How are trusts/settlors/beneficiaries taxed in your jurisdiction?

The Swiss tax authorities distinguish between revocable and irrevocable trusts. The deciding factor as to whether a trust is held to be either revocable or irrevocable is not necessarily the trust deed itself. Using an economic approach, it must be determined whether the settlor has irrevocably given up his or her control over the trust assets or not.

The taxation of a trust in Switzerland depends on its qualification, based on a circular published by the Swiss tax conference. Depending on this, the trust assets and the respective income can, in certain cases, be attributed for tax purposes to the beneficiary or the settlor (as a rule, the trust itself cannot be regarded as a taxpayer even if the trustee is located in Switzerland):

- a revocable trust's assets and income are attributed to the settlor for income and wealth tax purposes;

- the trust assets of an irrevocable fixed-interest trust as well as the income thereof are attributed to the beneficiaries in proportion to their interest;
- a Swiss resident settlor is considered not to have disposed of his or her assets when forming an irrevocable discretionary trust. The assets as well as the income thereof will, in principle, remain taxable in his or her hands; and
- a foreign resident settlor forming an irrevocable discretionary trust is normally considered to have disposed of his or her assets. If he or she later moves to Switzerland, the trust assets will, consequently, not be attributed to him or her. It is, however, strongly recommended to confirm this position by seeking a tax ruling.

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

Transfers of assets in favour of a trustee may breach the rights of protected heirs (see question 7.3 above *in fine*) and may therefore be subject to clawback claims in order for such protected heirs to receive the balance of their compulsory portion.

8.4 Are private foundations recognised/permitted in your jurisdiction?

Swiss law provides for specific legal provisions regarding foundations, including private foundations, which are called family foundations.

A family foundation is characterised as a foundation established for the benefit of beneficiaries who are members of the founder's family. According to Article 335 of the Swiss Civil Code and based on the legal practice of the Supreme Court, the list of purposes for which a family foundation may be set up is an exclusive one: education; welfare; and health. The family members who belong to the circle of beneficiaries should only be supported in certain circumstances, namely at a young age, when settling down or establishing a livelihood as well as in cases of hardship. According to Swiss law, it is not permitted that family members unconditionally benefit from a foundation's assets to make a living or to improve their economic situation. Swiss law family foundations that do not comply with the foregoing rules and have a broader purpose than the above-mentioned goals are illegal and void.

According to Swiss private international law, private foundations governed by the laws of another jurisdiction are recognised in Switzerland provided that they fulfil the publicity or registration provisions of such laws or, in the absence of such provision, provided that they are organised in accordance with the laws of that state, regardless of the fact that they might support, even entirely, the living costs of their beneficiaries.

8.5 How are foundations/founders/beneficiaries taxed in your jurisdiction?

Under Swiss law, foundations have legal personality. Consequently, they are subject to profit and capital gains tax in Switzerland. The founders are not taxable to the extent that the establishment of the foundation is not abusive.

Swiss resident charities are subject to profit tax on their income, including any donations made from Swiss or foreign resident individuals or entities, unless they are tax-exempt.

Entities that pursue a public or charitable interest are tax-exempt if their profit is exclusively and irrevocably devoted to a public or charitable interest. The entity needs to pursue the public or charitable interest effectively.

Donations of individuals to tax-exempt charities are, in general, deductible for income tax purposes. If the foundation is not tax-exempt, donations of individuals may be subject to gift tax.

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

Transfers of assets in favour of a foundation may breach the rights of protected heirs (see question 7.3 above *in fine*) and may therefore be subject to clawback claims in order for such protected heirs to receive the balance of their compulsory portion.

9 Matrimonial Issues

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

The law on civil partnership for same-sex couples came into force on 18 June 2004. In substance, it provides civil partners with almost the same rights and obligations as those of spouses. However, unlike spouses, civil partners are neither allowed to adopt children nor to benefit from medically assisted reproduction.

Civil partners are treated equally to spouses for tax and succession purposes.

Swiss federal law does not provide for any form of legal relationship for heterosexual couples other than marriage.

On 26 September 2021, the Swiss population accepted the legal institution of same-sex marriage in a popular vote. The new legislation will enter into force on 1 July 2022.

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

Under Swiss law, there are three different matrimonial property regimes:

- *Participation in accrued gain*: In the absence of any choice of law by the spouses or provisions contained in a marriage contract, the default regime of participation in accrued gains automatically applies. According to this regime, during the marriage, the spouses own two kinds of assets. On the one hand, the spouses own individual property. The individual property includes personal assets and chattels used exclusively by one spouse, assets belonging to one spouse prior to the marriage, assets acquired, at no cost, by inheritance or otherwise, certain claims for damages of a personal nature and assets purchased with the sale proceeds of such individual property. On the other hand, the spouses own their jointly acquired property. These accrued gains include, in particular, the income from the spouse's employment, benefits received from staff welfare schemes, social security and social welfare institutions, any compensation for inability to work, income derived from the spouse's individual property and assets purchased with the proceeds thereof.
- *Community of property*: Under the regime of community of property, all assets are presumed to belong to the community (including earned, gifted or inherited assets), with the exception of personal belongings. Each spouse jointly owns all the community assets and participates in half of the community upon dissolution of the regime (death or divorce). Individual property may, however, be created by a pre-/post-marital agreement, provisions made by third parties or by law. The adoption of the regime of community of property requires the signature of a pre-/post-marital agreement before a public notary in the form of a public deed.

- *Separation of property*: Under the regime of separation of property, each spouse administers his or her own assets and individually enjoys the related benefits, meaning that there is no joint property. More precisely, there is no acquired property or community that give raise to a monetary claim upon dissolution of the regime (by death or divorce). Such a regime may either be agreed upon in a pre-/post-matrimonial agreement signed before a public notary in the form of a public deed or be ordered by the judge, in particular when the spouses separate but do not divorce.

Foreign matrimonial regimes are recognised in Switzerland, provided that they are not in conflict with Swiss public policy. Swiss private international law in fact favours the spouses' autonomy, in the sense that matrimonial property relationships are governed by the law chosen by the spouses. The choice of law must be agreed in writing or result, with certainty, from the provisions of the matrimonial agreement. The choice of law may be made or amended at any time and has retroactive effect as of the date of the marriage, unless otherwise agreed. Should the spouses fail to choose one law in particular, the matrimonial relationships are governed by the law of the state in which both spouses are simultaneously domiciled or, if there is no such common domicile, by the law of the state in which both spouses were last domiciled together. If the spouses have never maintained a common domicile at the same time in the same state, their common national law shall apply. Swiss private international law also favours the mutability and retroactivity of the applicable law in the event that the spouses transfer their domicile in Switzerland. If the spouses have entered into a matrimonial agreement providing for a choice of law, the change of domicile has no effect on the applicable law.

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

Both pre-marital and post-marital agreements are permitted and recognised in Switzerland. These types of agreements must be entered into in the form a public deed and signed before a public notary either prior to the celebration of the marriage, or after the marriage (with retroactive effect as of the date of the marriage). It is possible to enter into a pre-/post-marital agreement prior to taking up residence in Switzerland. That said, it should be noted that certain aspects cannot be determined in advance by pre-/post-marital agreement, such as preconditions for a divorce and certain others aspects, including post-divorce financial maintenance or arrangements for children which do not have any binding effects without the approval of the court having jurisdiction over the divorce proceedings.

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

Under Swiss law, the criteria applicable to post-divorce maintenance are restrictive, in the sense that it would be due only if a spouse cannot reasonably be expected, under the circumstances, to provide for his or her own maintenance. The main principle, the so-called "clean break", is that the spouses must provide for themselves after the dissolution of the marriage. The relevant criteria in order to determine whether post-divorce maintenance is due are, in particular, the following:

- the allocation of duties during the marriage;
- the duration of the marriage (according to Swiss case law, a marriage that has lasted less than 10 years is, in principle, considered as not having had a significant impact on the financial status of the spouses);
- the standard of living during the marriage;
- the age and health of the spouses (according to Swiss case law, if a spouse is over 50 years at the time of the divorce and after a long marriage, it is presumed that taking up employment again cannot be imposed on the spouse; however, there have been some cases where a spouse was expected to work again after this age);
- the income and assets of the spouses;
- the extent and duration of childcare still required of the spouses;
- the education and career prospects of the spouses and the likely cost of reintegration into working life; and
- expectancy of federal old age and survivor's insurance benefits and of occupational or other private or state pensions, including the expected proceeds of any division of retirement benefits.

As a rule, except for long marriages exceeding 25–30 years, maintenance is only due for a limited transitional period of time in order to enable a spouse to adjust to separate life or until the children reach 16 years old.

Exceptionally, a maintenance contribution may be denied or reduced if it would clearly be inequitable, in particular if the spouse has grossly neglected his or her duty to contribute to the maintenance of the family, has wilfully brought about his or her own indigence, or has committed a serious criminal offence against the other spouse or a person close to him or her.

10 Immigration Issues

10.1 What restrictions or qualifications does your jurisdiction impose for entry into the country?

The requirements for entry onto Swiss territory depend on the nationality of the visiting foreign national, as certain states have concluded bilateral treaties with Switzerland waiving visa requirements – for example, the United States. A further distinction can be made between foreign nationals from a Schengen State (members of the Schengen area include EU Member States and Member States of the European Free Trade Association (EFTA)) and foreign nationals who are so-called "third country nationals" (nationals from outside the Schengen area and not from a state that has concluded a visa waiver treaty with Switzerland).

In the case of a foreign national from a Schengen State, no visa is required for a maximum stay of 90 days, provided the foreign national is only visiting Switzerland as a tourist and not taking up any form of employment. The stay must not exceed a total of 90 days within a period of six months.

In the case of third-country nationals, a visa may be required depending on the nationality of the foreign national. Third-country nationals requiring a visa must submit their visa application to the relevant Swiss foreign mission at their place of residence. Exceptions are made for third-country nationals already holding a permit for a Schengen Member State. The duration of a visitor's visa for third-state nationals requiring a visa varies from state to state, but also as a rule does not exceed the 90-day stay limit within a certain period of time.

In certain exceptional cases, an extension of a visa can be applied for; for example, if someone is taking up employment. However, in such cases, the individual would most probably have to leave Switzerland to await the authorities' decision – only in very exceptional cases can the individual wait for the decision in Switzerland on a visa that has already expired or been granted for a different purpose. Based on the prevailing division of competence between the federal government and the cantons in Switzerland, the cantonal authorities are responsible for the extension of visas or the granting of residence permits. Therefore, the handling of such cases can vary greatly from one canton to another.

10.2 Does your jurisdiction have any investor and/or other special categories for entry?

There is no specific investor programme as such in Switzerland, with the exception of the lump-sum taxation regime (see questions 2.2 and 3.2 above) and of some other special rules for foreign retirees (see below).

As a preliminary comment, it should be mentioned that EU/EFTA nationals benefit from the Agreement on the Free Movement of Persons entered into between Switzerland and the EU/EFTA Member States. On this basis, EU/EFTA nationals have the right to obtain a residence permit (B permit) provided that (i) they are financially self-sufficient or intend to carry on a business in/from Switzerland either in a self-employed capacity or as an employee, and (ii) that they have valid health insurance. If the EU/EFTA national meets these conditions, then the grant of a permit is virtually automatic.

The regime applicable to third-country nationals is stricter and the grant of residence permit remains discretionary, in the sense that, compared to EU/EFTA nationals, third-country nationals have no right to obtain a Swiss residence permit.

In terms of work permit, third-country nationals can be admitted only if they are well qualified. Moreover, work permits for third-country nationals are subject to certain quota restrictions. In addition to being a qualified worker, a third-country national may only be admitted as an employee if a Swiss or EU/EFTA national cannot be recruited for the same position on the domestic employment market or in another EU/EFTA Member State. Swiss nationals and foreign nationals from EU/EFTA Member States are always given priority. Accordingly, employers in Switzerland must prove that they have been unable to recruit a suitable employee from this priority category despite intensive efforts. This "Swiss-EU/EFTA priority", however, does not apply to the transfer of workers at management level, to highly qualified specialists and to individuals benefitting from family reunification.

Some specific rules apply to individuals retiring from a third country who have reached the age of 55, have sufficient financial resources, refrain from any gainful activity, have transferred the centre of interests to Switzerland and who can demonstrate "special personal ties with Switzerland". This particular condition is fulfilled if the retiree can demonstrate that he or she has frequently stayed in Switzerland in the past or he or she has close ties with relatives in the country.

In addition, for a non-EU/EFTA "young retiree" (under the age of 55 years old), the cantons along with the Federal Immigration Office can grant a residence permit on the basis of important public interest such as "preponderant cantonal fiscal interests", that is, if the concerned individual pays a substantial amount of taxes in Switzerland. The financial requirements to qualify for this special regime, which requires the negotiation of a lump-sum tax agreement (see questions 2.2 and 3.2 above), vary from one canton to another and can reach a taxable basis of CHF1 million per year.

Swiss law also provides for some special provisions applying to students and for individuals seeking medical treatment.

In terms of permanent residence permits (permit C), the Agreement on the Free Movement of Persons entered into between Switzerland and the EU/EFTA Member States does not foresee any provisions. Therefore, in the case of permanent residence permits for EU/EFTA nationals, the Foreign Nationals Act and individual settlement treaties, if existing, apply. For EU-17 (EU countries except for Cyprus and Malta) and EFTA nationals where such treaties exist, settlement permits are usually granted after five years of regular and uninterrupted residence in Switzerland. For EU/EFTA States with no such treaties, a settlement permit, in general, is granted after 10 years of regular and uninterrupted residence in Switzerland.

Third-country nationals may be granted a settlement permit after 10 years of regular and uninterrupted residence in Switzerland. It must be noted that requirements vary from state to state depending on whether a settlement treaty exists. There are special rules that apply to nationals from the United States or Canada. However, even in these cases, there is no legal entitlement to a settlement permit.

Once the settlement permit is granted, it is permanent. However, for control purposes, settlement permits are, as a rule, issued for the duration of five years. An extension is usually granted without any restrictions.

10.3 What are the requirements in your jurisdiction in order to qualify for nationality?

In January 2018, a revised version of the Federal Act on the Acquisition and Loss of Swiss Citizenship entered into force. From then on, individuals who have been resident in Switzerland for 10 years (including three years immediately out of the five years prior to the date of the application), hold a permanent residence permit (permit C), are socially and culturally integrated in Switzerland, comply with the Swiss rule of law, and do not endanger Switzerland's internal or external security may apply for Swiss citizenship through the so-called "ordinary naturalisation procedure". This applies to foreign nationals from an EU/EFTA State as well as to non-EU/EFTA State members. The application for Swiss citizenship has three stages, which consist of communities, cantons and federal government. Swiss citizenship can only be obtained if the applicant, after obtaining federal naturalisation, has also been naturalised by his or her community and canton. The communities and cantons decide at their own discretion and they have their own additional residence requirements, which the applicant must satisfy.

Foreigners married to a Swiss national can apply for Swiss citizenship through a "facilitated naturalisation procedure", provided that he or she has lived for five years in Switzerland (including one year immediately before the application) and that he or she has been married to the Swiss national for more than three years. The applicant for facilitated naturalisation must also be socially and culturally integrated in Switzerland, comply with the Swiss rule of law, and must not endanger Switzerland's internal or external security.

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

Except for lump-sum taxpayers (see questions 2.2 and 3.2 above) who would automatically lose their special tax status if they acquire Swiss citizenship, there is no particular taxation implication in obtaining Swiss citizenship.

The fees related to the ordinary naturalisation procedure are set by the cantons and are in the range of CHF1,000 to CHF3,000.

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

Except for the immigration rules described under question 10.2 and the special tax regime of lump-sum taxation set out under questions 2.2 and 3.2, there are no other special programmes designed to attract foreigners to take up residence in Switzerland.

11 Reporting Requirements/Privacy

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

Switzerland has implemented the OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters, and the related Common Reporting Standard as approved by the Council of the OECD on 15 July 2014 (hereinafter CRS), through, among others, the enactment of: (i) the Multilateral Competent Authority Agreement (MCAA); (ii) the Swiss Federal Law on Automatic Exchange of Information in Tax Matters (LEAR); and (iii) its implementation ordinance (OEAR, and with the MCAA, the LEAR and the Swiss AEOI Laws). The Swiss AEOI Laws entered into force on 1 January 2017. Data collection under the Swiss AEOI Laws started therefore in Switzerland on 1 January 2017, and the first reporting to the SFTA occurred as of 30 June 2018, whereas the exchange of information (from the SFTA to the competent authority of the partner state) started on or around 30 September 2018.

As of today, Switzerland has entered into an agreement for the automatic exchange of information on financial accounts (AEOI) with approximately 80 partner states and with the EU (whereas the bilateral agreement with the EU applies to its 27 Member States and their overseas territory and/or dependencies such as, e.g., Gibraltar). Yet not all AEOI agreements have entered into force, and some are subject to the successful implementation of a Global Forum action plan on confidentiality and data security for reciprocal exchange to be granted (e.g., Cyprus and Romania within the EU). A complete list of the partner states and the current status of the AEOI is available on the website of the State Secretariat for International Finance (https://www.sif.admin.ch/sif/en/home.html).

In addition, on 14 February 2013, Switzerland and the United States entered into a so-called "Model 2" intergovernmental agreement for the implementation of the Foreign Account Tax Compliance Act (FATCA) (Agreement Between Switzerland and the United States of America for Cooperation to Facilitate the Implementation of FATCA, hereinafter CH-US IGA), providing for the direct reporting from Swiss Financial Institutions (SFIs) to the Internal Revenue Service (IRS) and exchange of information upon request, without any reciprocity from the US. Such CH-US IGA came into force on 1 July 2014. The CH-US IGA has been implemented in Switzerland through the Swiss Federal Act on the Execution of the Implementation of FATCA (FATCA-Act), which entered into force on 30 June 2014. As the CH-US IGA and the related FATCA-Act are based on the "Model 2" agreement, information shall not be automatically exchanged with the IRS, but SFIs are obliged to register with and report directly to the IRS the information regarding US accounts as required by FATCA. On 8 October 2014, however, the Swiss Federal Council approved the mandate for negotiations with the United States on switching from a "Model 2" to a "Model 1" agreement, thus switching from a non-mutual direct reporting to a reciprocal exchange of information similar to the CRS. Despite the fact that the new "Model 1" agreement has not yet been entered into with the US, from 20 September 2019 onwards, group requests under the CH-US IGA can be made for cases from 30 June 2014.

Switzerland ratified the OECD/Council of Europe Multilateral Administrative Assistance Convention (MAC) on 26 September 2016 and, within the framework of the Base Erosion and Profit Shifting (BEPS) project, undertook in 2018 to spontaneously forward reports on certain advance tax rulings to partner states. That means that each country must itself identify the advance tax rulings and the recipient states, and transmit the information to the partner states. The partner states to the Convention have agreed to spontaneously exchange the content of advance tax rulings in the form of a template. The advance tax rulings themselves are not exchanged.

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?

Under the Swiss AEOI Laws (see question 11.1 above), each Reporting Financial Institution (as defined under the CRS) must report certain specific information with respect to each Reportable Account of such Reporting Financial Institution. The same shall apply to FATCA with respect to US Accounts upon switching to a "Model 1" agreement. Reportable information may include, without limitation, the: (i) name, address and jurisdiction(s) of tax residence of the Reportable Person(s); (ii) tax identification number (if any) or the equivalent thereof; (iii) date of birth of individuals or date of incorporation of legal entities; (iv) place of birth of individuals (if required by local law); (v) role of controlling persons (as applicable, including in case of trusts, among others, the trustee(s), settlor(s) and beneficiary(ies) of the trust); (vi) account holder type (legal entities); (vii) account number; (viii) year-end account balance; (ix) gross amount of interest, dividends and other income; (x) gross proceeds from the sale and redemption of financial assets; and (xi) name and identifying number of reporting financial institution.

In addition, Swiss tax residents (whether individuals or legal entities), while filing their annual tax return, must disclose holdings and/or assets held in structures abroad, as well as income deriving from such holdings and/or assets.

Finally, under the MAC, Switzerland has undertaken to spontaneously forward reports on certain advance tax rulings to partner states (see question 11.1). Ordinarily, advance tax rulings are issued by the cantonal tax administrations in Switzerland. The cantons must forward these to the SFTA. The SFTA carries out the administrative assistance procedure and transmits ruling reports to the partner states within the framework of the spontaneous exchange of information.

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?

As a general principle, there are no public registers of owners/beneficial owners/trustees or of other persons with significant control or influence over privately held companies, foundations or trusts established or resident in Switzerland.

However, most legal entities are required to be registered with the competent Commercial Register (at cantonal level), in particular limited companies and certain partnerships and foundations (including family foundations), in order to be validly constituted and existing under Swiss law. The Commercial Register is publicly available (online research may be conducted by company name on https://www.zefix.ch), including most of the supporting documents (e.g., constitutional documents). In addition, the partners or unit holders in certain types of legal entities, such as, among others, general or limited partnerships, limited liability companies or partnerships limited by shares, must be registered with the competent Commercial Register. Shareholders in corporations (*société anonyme/Aktiengesellschaft*) or cooperative companies (*société cooperative/Genossenschaft*) do not need to be disclosed with the Commercial Register and there is no public register thereof.

Shareholdings in companies incorporated in Switzerland or in companies not incorporated in Switzerland whose securities are listed in whole or in part, or whose primary listing is on SIX Swiss Exchange, must be reported to the respective company and to the Disclosure Office of SIX Swiss Exchange if exceeding certain thresholds. For such companies, disclosure (set forth in the Financial Market Infrastructure Act, its implementing Ordinance and related legislation) is required when acquiring or disposing, directly or indirectly, of shares or acquisition or sale rights relating to shares, and thereby reaching, falling below or exceeding the thresholds of 3%, 5%, 10%, 15%, 20%, 25%, 33⅓%, 50% or 66⅔% of the voting rights, whether exercisable or not. Notifications related to such significant holdings are published by issuers and are available on the website of SIX Swiss Exchange (https://www.six-exchange-regulation.com/en/home/publications/significant-shareholders.html).

In addition, members of the board of directors, as well as managers and any further authorised signatories of legal entities incorporated in Switzerland, must be registered with the competent Commercial Register (at cantonal level). The granting or withdrawing of a signatory power (individual or collective) is published in the Swiss Official Gazette of Commerce and listed on the excerpt of the Commercial Register of the relevant company (thus appearing even after having been cancelled) (https://www.zefix.ch).

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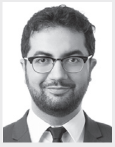

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