Private client law in Switzerland: overview

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Country Q&A | Law stated as at 01-Apr-2019 | Switzerland

A Q&A guide to private client law in Switzerland.

The Q&A gives a high level overview of tax; tax residence; inheritance tax; buying property; wills and estate management; succession regimes; intestacy; trusts; co-ownership; familial relationships; minority and capacity, and proposals for reform.

To compare answers across multiple jurisdictions, visit the Private client *Country Q&A tool*.

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Taxation

Tax year and payment dates

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

The income and wealth tax system includes three taxation levels:

- The federal tax system, which is common to all taxpayers. There is no wealth tax at the federal level.
- Specific tax systems, in each of the 26 cantons (the federal states of Switzerland). All cantons impose direct taxes on income and net wealth.
- The municipal taxes in all Swiss municipalities (Swiss municipalities are called *communes*). Municipal income and net wealth taxes are generally governed by cantonal laws.

Cantonal and federal tax laws on income and net wealth taxes were harmonised in 1995. However, the cantons and municipalities are still autonomous in setting their own tax rates and enjoy a limited degree of discretion in terms of interpretation of harmonised tax laws. This results in significant differences in effective tax burden.

The Swiss tax year for individuals runs from 1 January to 31 December. The tax payment dates and deadlines vary between the cantons with regard to cantonal and communal taxes. The federal income tax is due on 1 March of the year following the tax year. As the assessable elements are generally not known by this deadline, the taxpayer first

receives a provisional tax invoice and subsequently (once the tax return has been filed and tax is finally assessed) a final invoice.

Domicile and residence

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

Swiss tax laws use the concepts of fiscal domicile or residence. Unlimited liability to income and net worth taxation in Switzerland and in a given canton and municipality on a worldwide basis is tied to the fiscal domicile (residence) of an individual. Tax residence of an individual may either be based on:

- The individual's civil law domicile, that is, the place where a person resides with the intention of remaining there permanently (the place where the vital interests of the individual are centred, in terms of the closest personal and economic relations).
- The domicile according to the Civil Code.
- The qualified abode (fiscal habitual residence), that is, where a person stays at a specific place in Switzerland for:
    - at least 30 days (regardless of any temporary interruptions) in order to work there; or
    - at least 90 days (in the absence of any gainful activity).

In addition to worldwide taxation based on tax residence, non-resident individuals may be subject to limited Swiss tax liability only based on economic relations with Switzerland. Under domestic law, this tax liability can specifically derive from any of the following:

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

Taxation on exit

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

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

Temporary residents

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

Under domestic law (if a double taxation treaty does not provide otherwise), individuals are deemed to be tax residents in Switzerland and become liable to taxation on their worldwide income and assets if they either:

- Exercise a professional activity and remain in Switzerland for a period of at least 30 days, irrespective of any temporary interruptions.
- Do not exercise a professional activity and remain in Switzerland for a period of at least 90 days, irrespective of any temporary interruptions.

Taxes on the gains and income of foreign nationals

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

Nationality is not a criterion for personal taxation in Switzerland. Therefore, foreign nationals (just like Swiss nationals) may be taxed in Switzerland either based on fiscal residence, or only based on economic points of attachment. An example of an economic point of attachment is ownership of real estate located in Switzerland. Income derived from renting out Swiss real estate is subject to federal, cantonal and municipal income taxes where such real estate is located. Capital gains from the sale or exchange of Swiss real estate by private individuals are subject to separate, cantonal and municipal real estate capital gains tax (RECGT). However, no federal tax applies to such capital gains. Gratuitous transfers of real estate are subject to cantonal and municipal inheritance or gift taxes in most cantons (a few cantons do not impose any gift taxes and gratuitous transfers to the spouse or descendants are exempt from such transfer taxes in most Swiss cantons). RECGT rates vary between the cantons and generally depend on how long the property was held for, as well as on the absolute amount of gain. Anti-speculative surcharges usually apply in case of very short holding periods, whereas longer holding periods usually give rise to certain tax rate reductions. Certain other transactions that are economically equivalent to a transfer of real estate are also subject to RECGT, such as sales or exchanges of the majority of the shares in a real estate holding company (a few cantons even tax transfers of single shares in such companies). Most cantons also impose a real estate transfer tax (RETT), in addition to local land register and notarisation fees which are generally applicable. Depending on the canton, RETT may also apply to economic transfers of real estate, such as transfers of a majority interest in a real estate holding company for consideration.

Capital gains realised on Swiss-located business assets are taxable under mainstream federal, cantonal and/or municipal income tax rules, even if realised by a non-Swiss resident individual. Business assets may under some circumstances include movable or financial assets (securities), where the individual in question can be deemed to be a professional trader in such assets for Swiss tax purposes.

Capital gains on other, privately held, movable assets (including securities) are generally exempt from Swiss income or gains taxes, even if such assets are located or held in Switzerland. However, redemptions of shares by a Swiss resident corporate entity may (under some circumstances) be treated as a partial liquidation and may therefore attract a 35% dividend withholding tax liability (which affects both Swiss and foreign resident shareholders).

Business income from self-employed activities of a foreign national is subject to Swiss federal, cantonal and municipal income taxes, if such income is derived by a Swiss resident, or a foreign resident through a fixed place of business or permanent establishment located in Switzerland. Income from dependent services of a foreign national is subject to Swiss income taxes (typically imposed by way of a wage withholding tax (see below)) if the foreign national is a Swiss tax resident, or (in the case of a non-resident individual) if the service is performed in Switzerland.

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

Individual income tax rates of most cantons are progressive and vary from 0% to around 46% (federal, cantonal and municipal income taxes combined), depending on the:

- Amount of taxable income.
- Family status of the taxpayer.
- Canton and municipality.

Income from dependent services

All cantons impose a wage withholding tax on Swiss-resident foreign nationals not holding a permanent residency permit, payable by the employer and withheld from the foreign national's salary. Resident foreign nationals with a gross salary exceeding CHF120,000 (CHF500,000 in the canton of Geneva) must file an ordinary tax return, and any tax withheld is regarded as a pre-payment. Non-resident individuals (Swiss and foreign nationals) are always subject to a final wage withholding tax on payments (including board member fees) received from a Swiss employer and have no tax filing requirement regardless of the income received. They can still apply by 31 March of the following calendar year for a correction of their source taxation in certain situations.

For the Swiss concept of tax residence, see *Question 2*.

Non-resident Swiss and foreign nationals are subject to Swiss federal, cantonal and municipal income taxes only based on economic affiliation to Switzerland regarding specific items of income derived from Swiss sources.

However, most of these taxes are typically imposed by withholding applied by the payor taxation (limited tax liability, see *Question 2*). This concerns in particular:

- Director fees and management remuneration received from Swiss corporate entities.
- Income derived from Swiss real estate (no withholding applies, the foreign taxpayer must file a local tax return in Switzerland).
- Income derived from brokerage of Swiss real estate.
- Interest derived from loans secured by mortgages on Swiss real estate.

Investment income (interest, dividends)

Swiss-source investment income (that is, dividends paid by Swiss corporate entities, interest on bonds issued by Swiss resident issuers and interest from deposit with Swiss banks) is subject to a 35% federal withholding tax. This tax is fully recoverable by compliant Swiss resident taxpayers. For non-Swiss resident investors (whether Swiss or foreign nationals), this withholding tax principally constitutes a final burden, unless an applicable international double taxation treaty provides for partial (or in rare cases, full) relief. Foreign resident individuals residing in a jurisdiction that maintains a double tax treaty with Switzerland may typically reclaim 20% out of the 35%, if they are the beneficial owners of the income in question.

Lump sum taxation for foreign nationals

Non-Swiss nationals who do not engage in any gainful or professional activity in Switzerland can opt to pay an expenses-based tax (lump sum taxation) instead of ordinary income taxes and net wealth taxes, if they either:

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

The lump sum tax regime is available at the federal tax level and in most cantons except Zurich, Basel-City, Basel-Rural, Appenzell Ausserrhoden and Schaffhausen.

The lump sum income tax is assessed based on the taxpayer's and his/her family's annual expenditure. Such living costs are estimated based on information collected from the taxpayer, whereas the living cost-based taxable income is subject to certain minimum thresholds, such as:

- Seven times the annual rent (for taxpayers with a home, whether rented or owned). If the home is owned, the threshold is seven times the rental value of the property.
- Three times the annual cost of accommodation, including full board (for taxpayers without a home).
- The absolute minimum lump sum income tax basis at federal level is CHF400,000. Cantons may set a minimum tax basis for cantonal and communal tax purposes (which is typically higher in practice for non-EU citizens who wish to obtain a residence permit based on the lump sum taxation regime).
- The lump sum tax calculated as above is subject to a control calculation based on Swiss assets and actual income from Swiss sources, as well as certain income from non-Swiss sources for which the taxpayer seeks relief from international double taxation based on a Swiss double taxation treaty. Tax is effectively due on the higher amount resulting from the lump sum and the control calculation. Taxable net worth is also generally determined on a lump sum basis, depending on the cantonal tax law in question.

In the case of married couples, both spouses must fulfil the prerequisites for the lump sum taxation regime (that is, no Swiss nationality, no gainful activity in Switzerland). Eligible taxpayers may also opt for a modified version of lump sum taxation, where this is necessary to safeguard access to Swiss double taxation treaty benefits. Under the modified lump sum regime, an eligible taxpayer would generally include all revenues from sources within the relevant tax treaty jurisdiction in his/her Swiss taxable income basis (to the extent taxable under ordinary Swiss income tax rules), as if the taxpayer were fully subject to ordinary Swiss income taxation.

Inheritance tax and lifetime gifts

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

Inheritance and gift taxes may only be imposed by the Swiss cantons and municipalities. The cantons of Schwyz and Obwalden do not levy any inheritance or gift taxes. The canton of Lucerne does not levy gift tax. However, inheritance tax applies to lifetime gifts made within five years prior to the donor's death. A popular initiative to introduce a federal inheritance and gift tax was rejected in a people's referendum held in 2015.

Most Swiss cantons (and municipalities in a few cantons) impose inheritance and gift taxes if either:

- The deceased person was domiciled in the respective canton.
- The estate was opened in that canton.
- A lifetime donor has civil law domicile in such canton.
- In the case of non-domiciled deceased persons or non-domiciled donors, immovable assets situated in such canton are gratuitously transferred. Very few cantons also impose inheritance or gift taxes on certain gratuitous transfers of movable assets of non-domiciled deceased persons or donors located in the respective canton.

Inheritance and gift taxes are generally measured by the market value of the transferred assets. Special valuation rules may apply to immovable property in some cantons. Inheritance and gift tax rates are usually set progressively, depending on the absolute taxable value and on the relation between the transferor and the beneficiary (*see Question 8*).

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

Inheritance and gift tax rates are generally set progressively and vary between cantons. The tax rates mainly depend on the cash or market value being transferred, and the relationship between the deceased person or donor and the beneficiary.

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

- Transfers on death or gratuitous transfers during lifetime to a spouse or to descendants are generally exempt from tax in most cantons and are taxed at rather modest rates in the other cantons.
- Other tax-free allowances generally depend on the proximity or the family relationship between the transferor and the transferee.
- Gratuitous transfers between unrelated persons on death or *inter vivos* (that is, between living people) are usually taxed at rates ranging approximately between 20% and 55%.

Exemptions
Further exempt beneficiaries typically include:

- The Swiss Confederation.
- The cantons and municipalities.
- Recognised Swiss charities (foreign charities may be exempt based on mutual recognition).

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

Cantonal and municipal inheritance or gift taxes generally apply to:

- Transfers of property upon death of domiciled individuals.
- Any gratuitous transfers of property made by domiciled donors, gratuitous transfers of local immovable property upon death of any domiciled or non-domiciled deceased persons.
- Lifetime gifts of local immovable property made by domiciled or non-domiciled persons.
- In other words, such transfer taxes may arise where the lifetime donor or deceased person has or had their last domicile in the respective canton, or where real estate located in the relevant canton is gratuitously transferred by either a domiciled or a non-domiciled person upon death or *inter vivos*.

The right of cantons to impose inheritance or gift taxes may be limited by special double taxation treaties (*see Question 14*). Generally, Swiss tax treaties do not cover lifetime gifts. Moreover, applicable special treaties generally safeguard Switzerland's taxation right for gratuitous transfers of immovable property situated in Switzerland.

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

There are no other Swiss taxes on death or lifetime gifts.

Where immovable property is transferred by way of inheritance, bequest or lifetime gift, cantonal real estate capital gains taxes (RECGT) are generally deferred, regardless of the beneficiary's tax residence. Typically, such gratuitous transfers are exempt from local real estate transfer taxes (RETT).

Taxes on buying real estate and other assets

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

Purchase and gift taxes
Both Swiss residents and non-residents must consider the following taxes and charges when buying movable or immovable property in Switzerland:

- **Gift tax.** This may apply if the purchase price of the property deviates substantially from the market price (this is called mixed donation). In practice, price deviations from a fair market price of up to 25% are usually tolerated without triggering a gift tax liability. Mixed donations are taxable at the Swiss domicile of the donor, or (in the case of immovable property) where the immovable property is located (*see Question 8*). The tax rate is calculated as described in *Question 8*.
- **VAT.** Sales of goods and services are generally subject to Swiss federal VAT, where the seller is a taxable enterprise for VAT purpose. This is generally the case where an enterprise makes taxable supplies of goods or services in Switzerland of a value of at least CHF100,000 per annum. The standard rate of VAT is currently 7.7%. Some goods and services benefit from reduced rates and others are exempt from VAT.
- **Real estate transfer tax (RETT).** This tax applies to transfers of immovable property for consideration in most Swiss cantons. In many cantons, RETT also applies to economic transfers of real estate, such as acquisition of most shares in a real estate holding company.
- **Notary fees.** Notary fees are due in all cantons in relation to the drafting of public deeds, which are, among other things, required for the sale and purchase of real estate, as well as certain corporate transactions.
- **Securities Transfer Stamp Duty.** Federal stamp duties on the transfer of securities (such as shares, bonds, notes, bills of exchange) are imposed, where one of the parties in the transaction or an intermediary or broker qualifies as a Swiss securities dealer for stamp duty purposes. The securities dealer is liable for the stamp duty. Stamp duty is imposed on the consideration and is up to 0.15% for Swiss securities, or up

to 0.3% for foreign securities (subject to various half exemptions). Where the securities dealer is a party to the transaction, it must account for one-half duty for itself and one-half duty for the counterparty that is not a Swiss securities dealer. Where the securities dealer acts as an intermediary, it must account for one-half stamp duty for each party that is not a Swiss securities dealer. The securities dealer can charge the financial burden of the stamp duty to its counterparty or customer.

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

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

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

The purchase of real estate by people who are deemed non-Swiss persons is governed by important legal restrictions and conditions which are not tax related. This is the case if such real estate (whether held directly or indirectly) is not solely used for commercial purposes or as business premises (*Lex Koller*).

In particular, an initiative was adopted by popular vote at the federal level for limiting the number of secondary residences (residential property not used permanently as the owner's principal home). This federal law came into force on 1 January 2016. The text of the new constitutional article can be summarised as follows:

- Secondary residences must not exceed 20% of real estate in each commune. In very few communes, a special tax is levied on secondary residences that are not used for touristic purposes. However, in other communes, this tax is currently under discussion.
- Construction permits granted after 1 January 2013 are null and void if they do not respect the new quota.
- Controversially, the new law provides for the possibility to expand already existing secondary residences by 30%. In addition, primary residences can be transformed into secondary residences without any limitations.

Taxes on overseas real estate and other assets

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

Swiss tax resident individuals are principally taxed on their worldwide income and worldwide wealth, with the following exceptions:

- Income and gains derived from immovable property located outside Switzerland are exempt from Swiss federal, cantonal and municipal income taxes. Income from foreign real estate is taken into account for purposes of determining the applicable income tax rate (exemption with progression system). The value of directly held foreign real estate is exempt from cantonal and municipal net wealth taxes (but is taken into account for determining the wealth tax rate).
- Income derived from a foreign fixed place of business or permanent establishment is exempt from Swiss federal, cantonal and municipal income taxes but taken into account for determining the tax rate. Property invested in a foreign fixed base or permanent establishment is exempt from net wealth taxes but taken into account for determining the wealth tax rate.

These exemptions apply according to unilateral and domestic Swiss tax laws. Additional exemptions may result from the application of Swiss international double taxation treaties. For example, employment income derived from activities performed in a tax treaty partner jurisdiction may be taxable in that foreign jurisdiction under the tax treaty and will then generally be exempt from Swiss income taxes (subject to inclusion when determining the Swiss tax rate).

International tax treaties

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

Switzerland has entered into over 100 double taxation treaties, including with the UK and the US, in relation to income and capital taxes. Further, Switzerland has entered into six double tax treaties in relation to inheritance taxes. The inheritance double tax treaty with France expired on 31 December 2014, and has not been replaced by any other agreement as of 1 January 2015. Therefore, both states now apply their national tax laws. France usually avoids double taxation by deducting the Swiss tax paid.

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

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

More recent Swiss double tax treaties include a principal purpose test according to which the benefits of a tax treaty shall not be granted if one of the principal purposes of the structure or transaction implemented by the taxpayer is to avail the benefits of the tax treaty. Furthermore, regarding the provisions limiting source state withholding taxes on dividends, interest and royalties, most Swiss double taxation treaties include beneficial owner language, that is, the income in question must be beneficially owned by the person that is claiming the treaty benefits. Swiss tax authorities and courts give the beneficial owner notion a very far reaching interpretation. According to the jurisprudence of the Swiss Federal Supreme Court, beneficial ownership is a general condition precedent for qualification for tax treaty benefits, even under those Swiss tax treaties which do not yet include explicit beneficial owner language. Finally, according to Swiss courts' jurisprudence, all Swiss tax treaties are subject to an implicit anti-avoidance reservation, which stems from the Vienna Convention on the Law of Treaties and the principle of good faith interpretation. Under that principle, wholly artificial arrangements lacking sufficient economic substance do not deserve any protection under the tax treaties.

Wills and estate administration

Governing law and formalities

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

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

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

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

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

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

There are three different types of will:

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

  No witnesses or notarisation are required.
- **Certified (or public) will.** This must be:
  - prepared and certified by a public notary (or other official designated under cantonal law);
  - executed by the testator before two witnesses; and
  - signed by the witnesses, next to the testator's signature.
- **Oral (emergency) will.** This type of will is only available in exceptional circumstances such as war, epidemic or imminent danger of death. The testator must declare his/her last will in the presence of two witnesses, who must, immediately afterwards, inform the judicial authorities.

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

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

Redirecting entitlements

17. What rules apply if beneficiaries redirect their entitlements?

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

Validity of foreign wills and foreign grants of probate

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

Validity of foreign wills

The Swiss courts accept any foreign will that complies with the formal requirements of the law applicable under the HCCH Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions of 1961 (Hague Testamentary Dispositions Convention).

Validity of foreign grants of probate

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

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

Death of foreign nationals

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

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

Swiss citizens, even with dual citizenship, do not have a similar choice of law when residing in Switzerland (*Article 90(2), Swiss Federal Act on Private International Law*). A Swiss (dual) citizen residing abroad may, however, choose Swiss inheritance law to govern either his/her Swiss estate or his/her worldwide estate. This choice of law also establishes jurisdiction in Switzerland (*Article 87(2), Swiss Federal Act on Private International Law*).

On 17 August 2015, the Regulation (EU) 650/2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (Succession Regulation), came into force, simplifying international successions within the EU. Although Switzerland is not a member state of the European Union, the Succession Regulation has implications for Switzerland (see *Question 44*). This is the case in particular, if a Swiss national dies with last habitual residence in an EU member state or when a Swiss or EU national residing in Switzerland leaves assets in an EU Member State.

Administering the estate

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

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

It is not mandatory to appoint an executor, but it is often advisable to do so in order to ensure:

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

An executor acts in his own name and is neither a representative nor a fiduciary of the deceased, the heirs or the estate.

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

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

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

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

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

Establishing title and gathering in assets

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

Procedure for paying taxes

The heirs, together with the executor (if any), must make an inventory of the assets for tax purposes. Each heir or other beneficiary must file an inheritance tax return at the last domicile of the deceased person.

Distributing the estate

Generally, the assets of the estate are distributed among the heirs once they have concluded a written partition agreement.

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

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

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

See *Question 23*.

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

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

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

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

Succession regimes

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

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

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

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

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

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

Taking into account the specific statutory shares and compulsory portions, the following rules apply:

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

Forced heirship rights may also affect trust assets (*see Question 25* and *Question 30*). The forced heirship rights are currently subject to a legislative reform (*see Question 45*).

Forced heirship regimes

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

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

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

Avoiding the regime

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

Assets received by beneficiaries in other jurisdictions
See above, *Relevant assets*.

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

The forced heirship rights are currently subject to a legislative reform (*see Question 45*).

Real estate or other assets owned by foreign nationals

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

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

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

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

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

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

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

Intestacy

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

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

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

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

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

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

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

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

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

Trusts

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

Type of trust and taxation
The concept of trust is alien to Swiss civil law. However, properly established trusts under foreign law are generally recognised in Switzerland as a matter of Swiss private international law (Switzerland is a signatory state of the Hague Trusts Convention). Recently, parliament commissioned the Swiss Federal Council to introduce a genuine Swiss trust law (see *Question 45*).

The nearest equivalent to a trust is a foundation (that is, a legal entity to which assets are contributed for a specified purpose (*see Question 36*)). However, the use of a Swiss foundation for the maintenance of a family is very limited (*see Article 335, Civil Code*).

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

For Swiss tax purposes, trusts are not considered taxable persons or entities, and hence cannot be considered fiscally resident in Switzerland by themselves.

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

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

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

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

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

Jurisdiction of Swiss courts over trusts is governed by the Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters 2007 (New Lugano Convention). Outside the scope of the New Lugano Convention the jurisdiction of Swiss courts over trusts is governed by the respective Swiss conflict of law provisions. Under Swiss conflict of law provisions, Swiss courts decline jurisdiction if the trust deed explicitly designates a foreign court. If the trust deed is silent on jurisdiction or the jurisdiction clause in the trust deed is not exclusive, Swiss courts accept jurisdiction:

- For claims against a respondent in his capacity as a settlor, trustee or beneficiary provided he resides in Switzerland (*see Question 2*).
- Switzerland is designated in the trust's instrument as the place from which the trust is administered.
- Switzerland is the place from which the trust is administered as a matter of fact (if the trust's instrument is silent on the matter) or the trust has a presence in Switzerland and the claims relate to the trust's activity in Switzerland.

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

- Clawback claims brought by an heir in connection with an estate under Swiss jurisdiction.
- Undue preference claims brought by the administrator of a Swiss bankrupt estate.

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

As Swiss substantive law does not recognise trusts, trusts cannot be imported into Switzerland. For Swiss tax purposes, the trust itself is not regarded as a taxable person or entity. However, the settlor or beneficiaries of a foreign trust can be liable to Swiss taxation in respect of trust assets, income arising in the trust, or receipt of distributions from the trust, if they:

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

Provided that a Swiss resident trustee of a foreign trust settlement can properly demonstrate, based on the trust documents established when the trust was set up, that he/she/it are holding assets or receiving income from such assets merely in a fiduciary (trustee) capacity, then the trustee will not be taxed on the assets of the trust and the income derived from it as these assets will not be attributed to the trustee for Swiss tax purposes.

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

Types of trusts

Swiss administrative tax guidelines pertaining to foreign trust settlements with Swiss resident settlors or beneficiaries draw a distinction, for Swiss tax purposes, between revocable trusts, irrevocable discretionary trusts, and irrevocable fixed interest trusts. In practice, the tax qualification of a trust is often agreed with the competent Swiss tax authorities by way of an advance tax ruling, in relocation cases usually before relocation.

The most important distinction to be made is the one between revocable and irrevocable trusts. For a trust to be considered irrevocable, all the following conditions must be fulfilled:

- The trust deed provides for it.
- The settlor must not retain any revocation or other control rights regarding the trust and its assets. Therefore, the settlor:
    - must not benefit from any income or capital distributions from the trust assets; and
    - must not, based on the overall circumstances, be able to exercise any decisive influence over the trustee or the trust (such as rights to remove and appoint trustees, to appoint new beneficiaries, to replace protectors, to amend the trust deed, or to revoke or liquidate the trust, or to cause such things to happen).

- **Tax treatment of revocable trusts.** If any of the above-mentioned conditions is not fulfilled and the settlor is (or becomes) a Swiss tax resident, the trust will be treated as a revocable trust for Swiss tax purposes. Revocable trusts are completely ignored for Swiss tax purposes (transparent tax treatment), that is, all trust assets and all income derived from such assets are fiscally attributed to the settlor, as if the assets had never been settled into the trust. A revocable trust will be deemed to become irrevocable for Swiss tax purposes following the settlor's death, unless a right of revocation can still be exercised by another person after such event.

Tax treatment of irrevocable trusts. Trusts deemed irrevocable are categorised, for Swiss tax purposes, into discretionary and fixed interest trusts.

Treated as irrevocable fixed interest trusts are trusts that specify the beneficiaries and their rights in the trust documents, so that the trustee is effectively bound and has no discretion regarding distributions of income or capital of the trust. The beneficiaries of an irrevocable fixed interest trust would generally have legally enforceable claims to the income or assets of the trust. According to Swiss tax guidelines, beneficiaries of a fixed interest trust are equated to holders of rights of usufruct. As such, the beneficiaries are fiscally attributed both the assets of the trust (for wealth tax purposes) and the income generated by such assets, regardless of any distributions from the trust. The setting-up of such an irrevocable fixed interest trust is treated as a gift from the settlor to the beneficiaries, which may be subject to cantonal and municipal gift taxes at the settlor's place of tax residence, depending on the relationship between the settlor and each beneficiary (the spouse and descendants are in most cases treated as exempt beneficiaries). Income of such a trust is taxed in the hands of the Swiss tax resident beneficiaries, as soon as the beneficiary acquires a fixed claim to receive such income (in practice, income taxation would often occur upon receipt by the beneficiary of the income distribution). Where capital gains or repayments of capital can be proven, no income taxes are imposed. Swiss tax guidelines suggest that trust capital can only be distributed after distribution of all trust income. The same tax principles are applied on liquidation of the trust.

Where the trustee has full discretion regarding distributions and the trust is not deemed to be a revocable trust for Swiss tax purposes, it can be classified as an irrevocable discretionary trust. However, it should be noted that if the settlor of such a trust is a Swiss tax resident at the time the trust is being set up, the trust will continue to be fiscally ignored as if it were a revocable trust, and accordingly the trust assets and income continue to be fiscally attributed to the settlor until his/her death (or termination of his/her Swiss tax residence). The following Swiss tax treatment generally applies to a recognised irrevocable discretionary trust:

For as long as no distributions from the trust occur, the assets and the income of the trust are neither attributed to the settlor, nor to any (potential) beneficiaries of the irrevocable discretionary trust. This is principally also the case, if at a later stage the settlor becomes a Swiss tax resident. However, Swiss tax authorities tend to challenge this opaque tax treatment of the trust based on tax avoidance considerations, if substantial assets were settled into the trust shortly before the settlor became a Swiss tax resident. On the other hand, any distributions from an irrevocable discretionary trust to Swiss resident beneficiaries are, according to the Swiss tax guidelines, taxed as income in the beneficiaries' hands, unless the beneficiary can prove that the distribution concerns initially contributed trust capital. Again, the tax guidelines suggest that trust capital can principally only be distributed after distribution of all trust income. Furthermore, given that the trust assets are not fiscally attributed to the Swiss resident beneficiaries prior to the distribution, any capital gains are attributed to the trust, and hence cannot be received as income tax-exempt capital gains distributions by Swiss resident beneficiaries according to the tax guidelines.

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

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

- **A distribution out of a revocable trust.** This is characterised as a gift from the settlor and is potentially subject to cantonal gift tax, if the settlor is domiciled in Switzerland at the time of the distribution.
- **A distribution out of an irrevocable fixed interest trust.** In this case, the Swiss-resident beneficiaries are regarded as holders of a life interest (*usufruct*) in the trust assets. This means that, for income tax purposes, trust income is attributed to the beneficiaries on an arising basis (or in practice sometimes upon receipt of a distribution).
- **A distribution out of an irrevocable discretionary trust.** In this case, income tax is levied on the Swiss resident beneficiaries, once the trustee has exercised his discretion to make a distribution, unless the

beneficiary can prove a repayment of initially contributed trust capital (which is usually only accepted by the tax authorities after all trust income has been distributed). According to the tax guidelines, distributions of capital gains are taxable as income in the beneficiaries' hands, as the assets on which the capital gain has arisen were not fiscally attributed to the beneficiaries.

33. If your jurisdiction has its own trust law:

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

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

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

Under the default Swiss matrimonial property regime (that is, participation in accrued gains, see *Question 40*), each spouse retains and manages his or her own assets and acquisitions during the marriage. Therefore, the spouses are in principle free to transfer their own assets into trust.

However, on dissolution of the marriage, each spouse is entitled to one-half of the other spouse's assets that were acquired during the marriage, subject to contractual modifications by the spouses (see *Question 40*). Particularly, all donations, including settlements into trust, made within five years before the dissolution of the marriage are added to the calculation (unless the other spouse had consented). If the remaining assets are not sufficient to cover the spouse's entitlement to one-half of the acquisitions, Swiss law provides for a clawback claim against the recipient of such donation, for example, a trustee.

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

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

Charities

36. Are charities recognised in your jurisdiction?

Charitable organisations are recognised and hosted in Switzerland. Switzerland's attractiveness as a place for charities is demonstrated by the fact that there are about 13,000 active charitable foundations, with assets of about CHF100 billion.

From a Swiss law perspective, charitable legal entities are governed by the law of the country under which they are organised (*Article 154, Swiss Federal Act on Private International Law*). Charitable legal entities organised in Switzerland are therefore governed by Swiss law.

Almost all types of Swiss legal entities (for example, foundations, associations, limited liability companies, co-operatives and so on) can be used as charities. However, the majority of charities are either foundations or associations.

There are several reasons to favour the Swiss foundation over other structures, for example:

- The foundation structure ensures long-term sustainability.
- The founder can exercise a certain control in relation to how the assets are to be used and administered, by defining the purpose of the foundation and providing for investment rules in the foundation charter or regulations.
- The founder can also be a member of the foundation board.

Swiss foundation law is governed by the:

- Civil Code (*Articles 80 to 89*).
- Swiss tax legislation.
- Guidelines on the Incorporation of Foundations, issued by the Federal Department of Internal Affairs.
- Circular of the Federal Tax Administration of 8 July 1994.

The regulatory and legal framework for foundations remains the same regardless of the Swiss city in which the foundation is finally set up. Charities typically require a tax exemption ruling in their canton of domicile, therefore

the domicile is determined (among other things) in accordance with the respective canton's practice regarding the tax exemption of charities.

37. If charities are recognised in your jurisdiction, how can an individual donor set up a charity?

Establishing a charity

To incorporate a charitable foundation (*see Question 36*), the individual donor (the founder) must contribute the assets for a specific charitable purpose. According to the practice of the federal supervisory authority, the founder is required to contribute an initial capital of CHF50,000 to the foundation. Any assets given to the charitable foundation must be devoted irrevocably. Any repayment or forfeiture of a donation which goes back to the donor must be excluded.

The founder can set up a charitable foundation either by:

- Public deed during his lifetime.
- Last will or inheritance contract.

The founder is free to dispose of his assets/estate up to the devisable portion (that is, to the extent to which forced heirship rights are respected (*see Question 24*)).

The foundation is validly established when registered in the commercial registry based on the foundation charter, indicating the members of the foundation board. In addition, the foundation board must nominate an independent (external) auditor.

If the foundation is to be set up through a last will, the testator must stipulate the following in the will:

- The foundation's purpose.
- The estate assets (or amount) that will form part of the foundation assets on his death.

If there is no executor of the will, the competent supervisory authority is responsible for the establishment of the foundation.

To benefit from a tax exemption and to allow Swiss resident donors to structure donations in a tax-efficient manner, the charity must apply for a tax exemption ruling in its canton of domicile.

Supervisory authorities

Foundations are subject to supervision by the community (federal, cantonal or municipal) to which they are designated.

Foundations with an international scope are usually supervised by the Swiss Federal Department of Home Affairs. Foundations must file the following documents with the relevant federal authority:

- An annual report on their activities (including grants).
- Annual financial statements.
- An auditors' report.

In some cases, small foundations may be exempted from the duty to have an auditor by the respective cantonal or federal supervisory authority.

The supervisory authority must ensure that the bodies of the foundation observe the founder's wishes at all times and use and administer the foundation's assets according to the foundation's purpose as stipulated in the foundation charter.

Another important task of the supervisory authority is to review the various draft documents for the set-up of a foundation before its incorporation and subsequent registration in the commercial registry.

38. What are the benefits for individuals when setting up charitable organisations?

In principle, a donor is free to dispose of his estate and make a gift/donation to a charity (although forced heirship rights must be respected (*see Question 24*)).

The following taxes are usually triggered when the donor makes a gift/donation, regardless of whether the beneficiary is situated in Switzerland or abroad:

- Cantonal gift tax, which is levied if the donor is resident in the respective canton and makes a donation while he is alive.
- Inheritance tax, which is levied if the donation is made as of the death.

The gift or inheritance taxes are levied by the canton of residence of the donor or deceased.

However, most cantonal gift and inheritance tax laws provide an exemption for gifts/donations to certain qualifying, tax-exempt charities. Therefore, if a donation is granted to an institution of public or charitable interest in Switzerland that is recognised as a tax-exempt charity, the donation may be subject to:

- A gift tax exemption (in relation to estate or inheritance tax).
- An income tax deduction (with certain restrictions), if qualifying charitable contributions to Swiss institutions amount to at least CHF100 per annum. The maximum deductible amount corresponds to 20% of the taxpayer's net taxable income before the charitable deduction.

If the donation is made to a charity located in another canton, the tax treatment is governed by inter-cantonal reciprocal agreements. Therefore, it should be carefully reviewed in each case whether such reciprocal agreement is in force and covers the scope of an inter-cantonal donation.

In relation to gift and donations made to foreign charities, these are generally not deductible for income tax purposes and are only tax exempt for gift tax purposes on an exceptional basis if specific bi-lateral or multi-lateral agreements granting reciprocity apply. Some cantons have entered into such agreements so that donations from Swiss-resident donors to certain foreign charities are not taxed. These agreements are mostly limited in their scope, so that any contribution to be considered should be carefully reviewed under the various applicable rules of the different agreements for gift tax purposes.

Ownership and familial relationships

Co-ownership

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

Under Swiss inheritance law, the undivided estate of a deceased person is jointly owned by the members of the community of heirs. The same holds true regarding co-owned or jointly owned property of the deceased person, those co-ownership or joint ownership interests fall into the estate of the deceased person. Each Swiss resident member of the community of heirs in the undivided estate is liable to personal taxes for his/her fractional interest in the assets of the undivided estate (net worth taxes, personal income taxes on the income fraction pertaining to the respective heir). The undivided estate as such is not a separate taxable person or entity under Swiss tax laws. Under the inheritance tax regimes of most Swiss cantons, each heir or other beneficiary is separately accountable for inheritance tax for his/her own share in the estate, or bequest or other benefits received. Certain cantons (such as Grisons) impose instead an estate tax on the estate as such, whereby the applicable tax rates are determined by the amount of benefits accruing to each beneficiary and the familiar relationships of each beneficiary to the deceased person.

Familial relationships

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

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

The following matrimonial regimes are available:

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

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

The spouses may choose the applicable matrimonial law among the law of their current or first shared domicile as well as the matrimonial law of one of the spouses' foreign nationalities (*Article 52(2), Swiss Federal Act on Private International Law*).

The Regulation (EU) 1103/2016 on enhanced co-operation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes (Matrimonial Property Regulation) applies for most legal proceedings as well as authentic instruments formally drawn up on or after 29 January 2019. Although Switzerland is not a member state of the EU, the legislation of the EU has an impact on Switzerland (see *Question 44*).

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

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

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

42. How are the following terms defined in law:

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

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

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

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

Legitimate
This is not legally defined.

Civil partnership
This is a legal term to define same-sex couples who have registered their relationship with the Civil Registry Office (*see Question 41*).

Minority

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

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

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

Unless otherwise stipulated by the deceased, a minor's parents can use the income from the minor's assets for that minor's maintenance, education and training, and for the needs of the entire household (if appropriate). Any remaining income becomes part of the minor's estate. The child protection authority can authorise the parents to use some of the child's capital, if necessary.

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

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

Capacity and power of attorney

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

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

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

If no advance care directive has been issued, the person's spouse or registered partner living in the same household or providing regular and personal assistance, has the power to represent the person lacking capacity in certain restricted matters. The consent of the adult protection authority is required for certain legal acts.

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

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

Proposals for reform

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

On 29 August 2018, the Swiss Federal Council issued its report on the envisaged revision of the Swiss Inheritance Law. In particular, the main purposes of the revision are as follows:

Reducing the forced heirship shares of the deceased's children (from 75% of the statutory share to 50%), and to completely remove the parents from the category of heirs protected by the forced heirship regime.

In case of pending divorce proceedings, the surviving spouse may under certain circumstances lose its forced heirship right.

In certain circumstances, the unmarried partner of the deceased has a right for financial support if he would otherwise suffer from financial distress.

The forthcoming parliamentary debates are expected to start in mid-2019 and the new provisions are unlikely to become effective before 2021. In addition, further revisions are about to be initiated in 2019, dealing, among others, with the succession of family owned businesses.

Over the last years, several political initiatives requiring the introduction of trusts in Switzerland were brought forward. On 13 March 2019 parliament voted in favour of an initiative requiring the Swiss Federal Council to provide for a genuine Swiss trust law. The Swiss Federal Council now has two years to draft a legislative proposal.

On 17 August 2015, the Succession Regulation entered into force (see *Question 19*). Furthermore, the Matrimonial Property Regulation will also have an impact for Switzerland. For example, in case an EU national residing in Switzerland:

- Had his/her first common matrimonial residence in an EU member state.
- Owns real property in an EU member state.
- Intends to move to an EU member state or moved to Switzerland from an EU member state.
- If such EU national chooses the law of a member state to govern his matrimonial property regime.

It has to be noted, however, that the Matrimonial Property Regulation only applies if the marriage was entered into or the choice of the law of an EU member state with regard to the matrimonial property regime was made on or after 29 January 2019.

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