



**Welcome  
to Switzerland**

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# Relocation to Switzerland

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- Tax Planning
- Trust & Estate Litigation

In today's globalized world, migration is no longer just driven by economic and existential needs. People increasingly choose to be expatriates and lead international lifestyles. As such, relocation planning has never been as important. In this brochure, we set out the most important legal and tax considerations to bear in mind if you are planning a move to Switzerland. Following a brief general overview of the Swiss legal system, the brochure summarises the most important tax laws, the rules on foreigners acquiring Swiss real estate and the most relevant aspects of Swiss family, divorce and succession law.

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

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# Switzerland at a Glance

## Overview

Switzerland has a population of almost 8.5 million, of which roughly one quarter are foreign nationals. The country has four official languages (German, French, Italian and Romansh) and English is also widely spoken.

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

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

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

Switzerland has a stable economy thanks to its highly developed professional services sector (including banks and insurance companies) and thriving manufacturing and pharmaceutical industries. Competitive taxation levels both for individuals and corporations help to stimulate business and migration.

Switzerland's outstanding healthcare system, which is a combination of public, private and semiprivate healthcare institutions, offers a large network of highly qualified doctors and hospitals, which are equipped with the most cutting edge medical facilities.

## Legal System

As is the case with most European countries, Switzerland is a civil law jurisdiction. One of the most important pieces of Swiss legislation is the codification of private law in the Civil Code, which came into force in 1907 and was influenced by both the German and French civil codes. The Civil Code is published in three of the official Swiss languages – German, French and Italian – and is revered for its concise and plain language.

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

# Migrating to Switzerland

## Residency

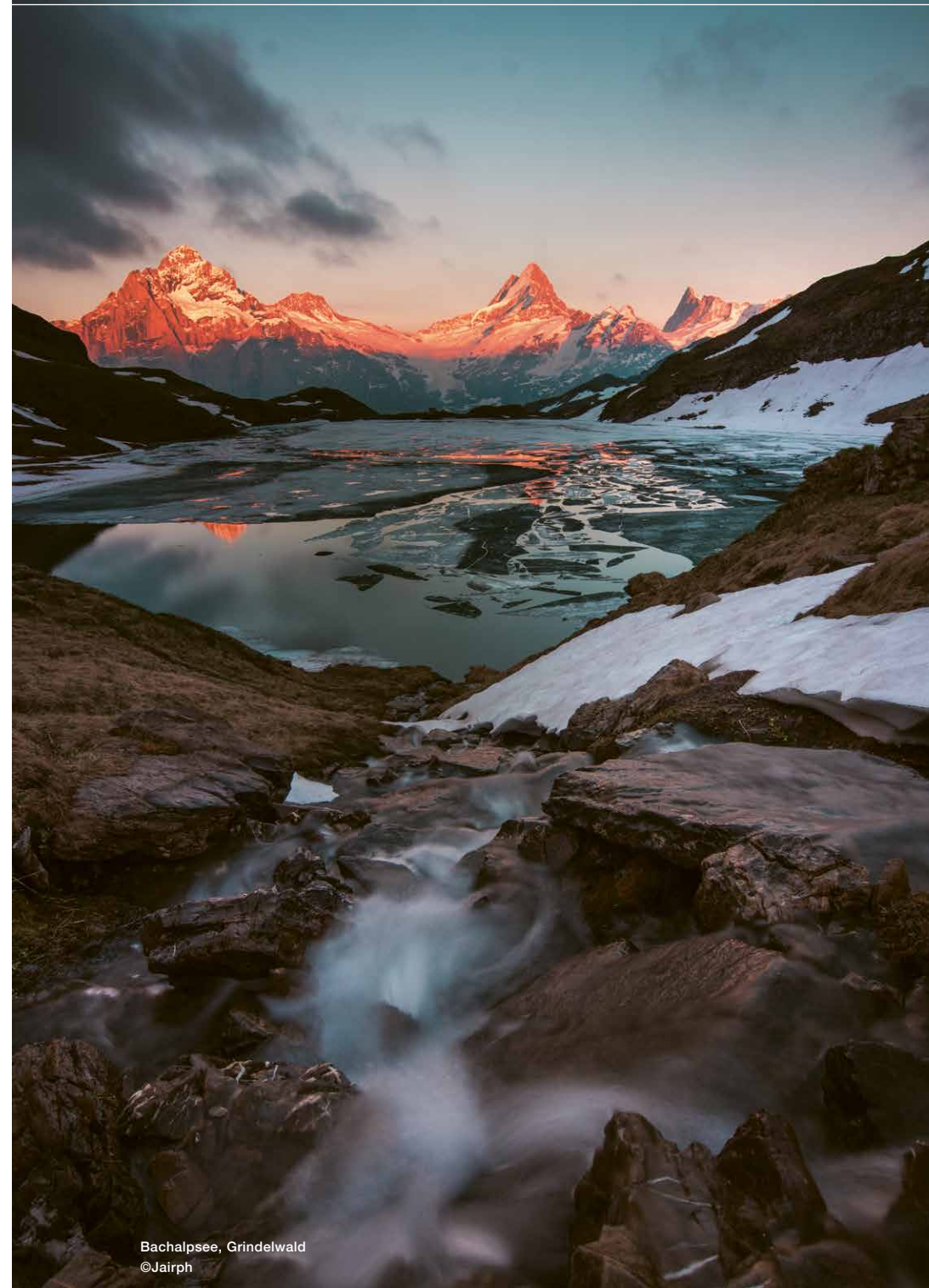
Switzerland operates a dual immigration system with different rules applying to EU/EFTA and non-EU/EFTA nationals.

### EU/EFTA Nationals

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

### Non-EU/EFTA Nationals

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



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

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

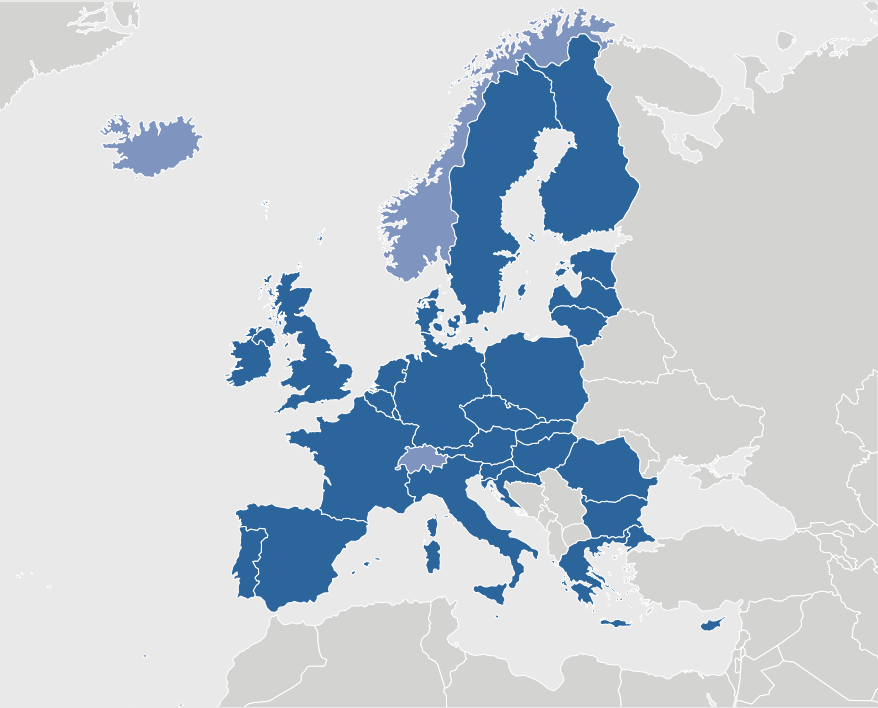
### Citizenship

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

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

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

**List of EU and EFTA states**



<b>EU countries</b>			<b>EFTA countries</b>
Austria	Germany	Netherlands	Iceland
Belgium	Great Britain*	Poland	Norway
Bulgaria	Greece	Portugal	Principality of Liechtenstein
Croatia	Hungary	Romania	Switzerland
Cyprus	Ireland	Slovakia	
Czech Republic	Italy	Slovenia	
Denmark	Latvia	Spain	
Estonia	Lithuania	Sweden	
Finland	Luxembourg		
France	Malta		

\*as at 30.10.2019

Source:  
Sicherheitsfonds BVG ([http://www.sfbvg.ch/xml\\_3/internet/EN/application/d50/f60.cfm](http://www.sfbvg.ch/xml_3/internet/EN/application/d50/f60.cfm))

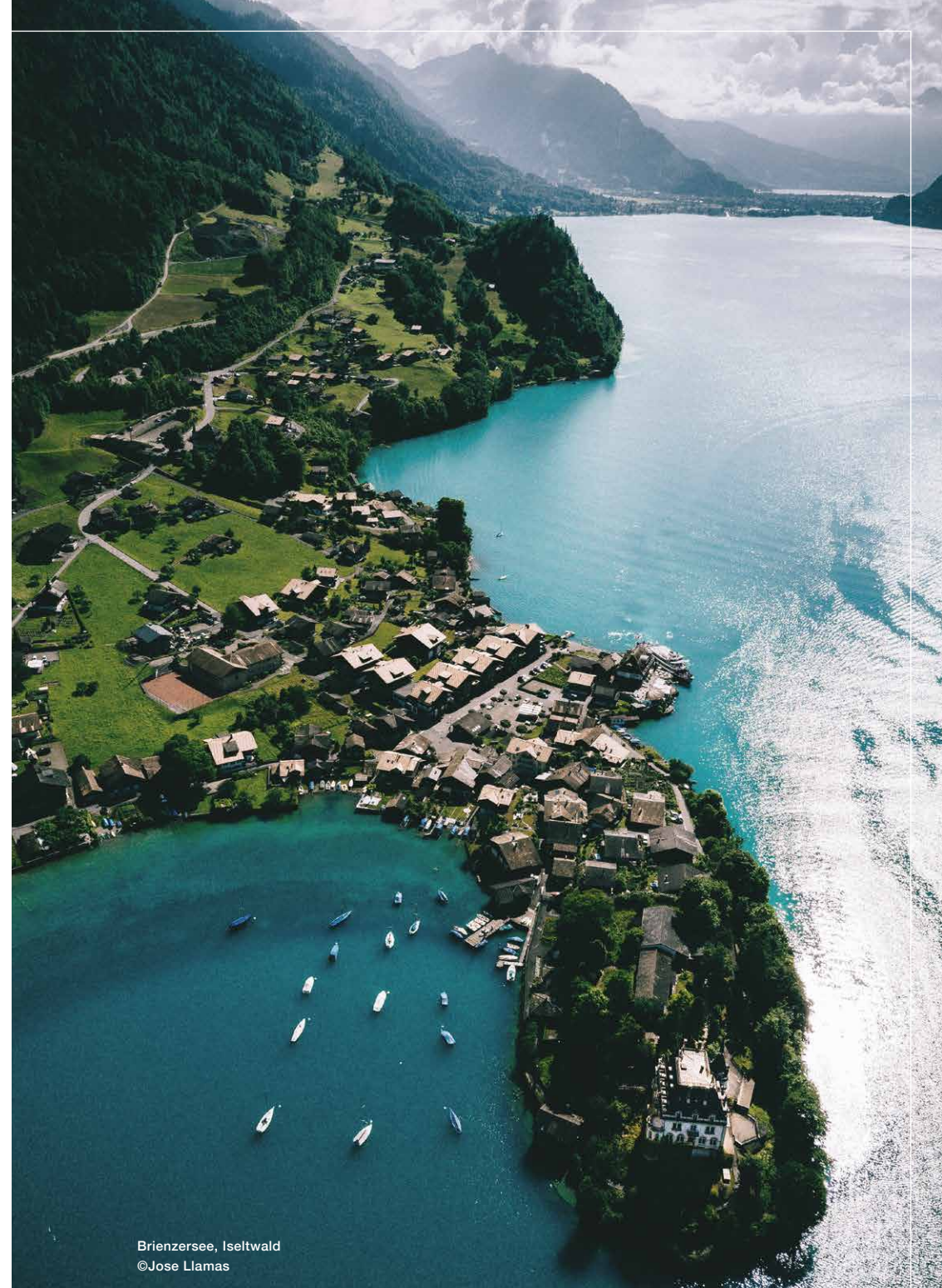
# Taxation and Social Security

## Unlimited Tax Liability in Switzerland

### Tax Residence in Switzerland

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

In addition to unlimited tax liability in Switzerland, Swiss tax residency typically also brings with it compliance requirements such as the obligation to file an annual tax return and ancillary consequences such



as becoming subject to the automatic international exchange of information and the American CRS and FATCA regimes.

## **Taxation of Income and Wealth**

### **Income Taxation**

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

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

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

In addition to the income tax exemptions under domestic legislation, double taxation treaties may provide for other types of income to be exempt from Swiss taxation (but nonetheless relevant to determine the applicable tax rate; so-called “exemption with progression”). These may include the compensation for board memberships in foreign companies or income from employment activities abroad. The gross amount of taxable income in Switzerland may be further reduced by various deductions, such as for debt interest, charitable donations, contributions into qualifying pension plans or deductions for professional expenses or wealth management.

The applicable tax rate depends on a number of factors. Income tax rates are progressive and vary depending on the canton and, within a canton, on the specific municipality of residence. On a federal level, income from qualifying participations can benefit from a 40% reduction of the tax basis. Some cantons have introduced a similar dividend relief system, while others provide relief through a reduced tax rate. Following a referendum held on 19 May 2019, Switzerland adopted the Federal Act on Tax Reform and AHV Financing, which introduced reforms including increased dividend taxation, according to which

dividend inclusion for individuals will rise to 70% at federal level and to at least 50% at cantonal level (with the cantons free to increase the inclusion ratio even further). The new provisions are expected to come into force on 1 January 2020.

In 2019, the ordinary effective income tax rate for unmarried persons without children or church affiliation at maximum progression ranges between 22.7% to 45%.

### **Wealth Taxation**

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

In 2019, wealth tax rates in the various cantons and municipalities range from 0.13% to 1.01% of the taxable value.

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

### **Lump Sum Taxation**

As an alternative to the ordinary regime of income and wealth taxation, most cantons provide taxpayers the option of being taxed on their worldwide living expenses by way of lump sum taxation (also known as “forfait”). Although cantons Zurich, Basel-City, Basel-Country,



Schaffhausen and Appenzell Ausserrhoden have abolished lump sum taxation on the cantonal level, it continues to be a possibility federally and in most other cantons. Note, however, that the lump sum taxation regime does not apply to inheritance or gift taxation. As a result, wealth and succession planning structures, such as trusts and foundations, still require individual assessment for tax purposes. For such structures, it would typically be appropriate to obtain a tax ruling from the competent cantonal tax authorities.

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

In a lump sum regime, the income tax basis is determined by a tax ruling that must be obtained from the cantonal tax authorities, and is derived from the highest amount of the following figures:

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

The control calculation takes into account any income from Swiss sources (e.g. real estate investments, pensions, shareholdings, etc.). The basis for wealth taxation is typically determined by the cantonal legislation applicable to taxable income. Both income and wealth taxes are levied at ordinary rates under the lump sum taxation regime.

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

### **Inheritance and Gift Taxation**

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

- The deceased or the donor had their (last) Swiss residence in that canton;
- The asset in issue is real estate located in the canton; or
- The asset in issue is a commercial asset that was transferred abroad from the canton.

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

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

There is a real risk that taxpayers are taxed more than once for inheritance and gifts because Switzerland has only concluded a handful of double taxation treaties on inheritance tax (e.g. with the UK, Germany and the US). To the extent that it has done so, the treaties are in any event not comprehensive and do not cover gift taxes.

### **International Exchange of Information: FATCA and AEI/CRS**

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

to levy a high withholding tax on undisclosed accounts. Swiss financial institutions report the account information directly to the US tax authorities with the consent of the US customers concerned.

Similar to the FATCA concept, Switzerland has introduced legislation implementing the automatic exchange of information (“AEI”) effective as of 1 January 2017. As of 1 January 2019, Switzerland has agreed to the automatic exchange of information with more than 89 partner countries, including the European Union, Liechtenstein, Russia, Monaco, Cayman Islands, Australia and China, but not the US.

The AEI subjects Swiss financial institutions to reporting requirements pursuant to which they must collect account information relating to persons who are tax residents in the partner countries. As most Swiss AEI treaties are reciprocal, Swiss tax residents who hold accounts or other assets outside Switzerland are also subject to the international automatic exchange of information to the Swiss authorities.

#### **Customs and Import VAT**

The import of goods is generally subject to import duties (also known as customs duties) and import VAT. In 2019, VAT rates in Switzerland are at 7.7% of the assessment basis, with a reduced rate of 2.5% being applicable to certain goods, such as food products, non-alcoholic beverages, books, magazines and pharmaceuticals. Customs duties are determined based on a tariff system. Compliance with the formal requirements of Swiss customs and VAT legislation is complex and the import of goods, for example, during the relocation process, is typically handled by specialized service providers (usually logistics firms).

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

#### **No Tax Residence in Switzerland: Limited Tax Liability in Switzerland**

Persons not resident in Switzerland for tax purposes may nonetheless be subject to limited tax liability here if they have a specific economic nexus to the country. The most relevant factors to trigger such a liability include: permanent establishments in Switzerland; brokering in or ownership of Swiss real estate; exercising professional activities in Switzerland; membership of a board of directors or management of a Swiss legal entity; and the receipt of pension benefits from Swiss sources. Swiss double taxation treaties contain provisions on how such income should be treated and on how double taxation can be avoided or mitigated.

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

#### **Taxation of Real Estate Transactions**

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

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

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

## **The Swiss Social Security System**

### **Contributions into the Social Security System**

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

Persons working or living in Switzerland are subject to the Swiss social security system. In cross-border situations, a person’s participation in the system is decided pursuant to Swiss domestic legislation, bilateral treaties (if applicable) and the coordination rules with the EU/EFTA.

The Swiss social security system depends on social security contributions made by employees, self-employed individuals and also non-working individuals, mainly into pillar 1. A crucial aspect of relocation planning is correctly to determine the social security status of a Swiss tax resident or an individual working in Switzerland in order to ascertain the applicable basis and rates for contributions. Swiss social security contributions into pillar 1 range from approx. 10% (for self-employed individuals) to approx. 13% (for employees; with contributions being shared equally by employer and employee) of a person’s gross income. Contributions into pillar 2 (the pension) vary depending on the pension provider.

### **Benefits from the Swiss Social Security System**

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

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

### **Health Insurance**

Swiss resident individuals are obliged to arrange a basic health insurance with a Swiss provider. In addition to the basic health insurance, in most cases, additional coverage can be purchased. Swiss legislation provides for certain exceptions to compulsory health insurance, such as for individuals with sufficient coverage abroad which cannot be matched in Switzerland. Health insurance is provided by independent Swiss insurance companies, and it is, in particular, not linked to an individual’s employment. If a person is not employed, accident insurance must also be included in the health insurance package.

# Acquisition of Real Estate in Switzerland

## **Lex Koller**

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

### **EU/EFTA Nationals with Swiss Residence Permit**

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

### **Non-EU/EFTA Nationals Resident in Switzerland**

Non-EU/EFTA nationals who are resident in Switzerland are considered

to be Swiss nationals for the purposes of Lex Koller if they hold Swiss residence permit C. If this is not the case, they may still acquire without authorisation residential property of an appropriate size at their actual place of residence and commercial property. Specific authorisation is required for them to acquire a holiday home.

### **Non-Resident Foreigners**

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

## **Ownership**

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

## **Formalities**

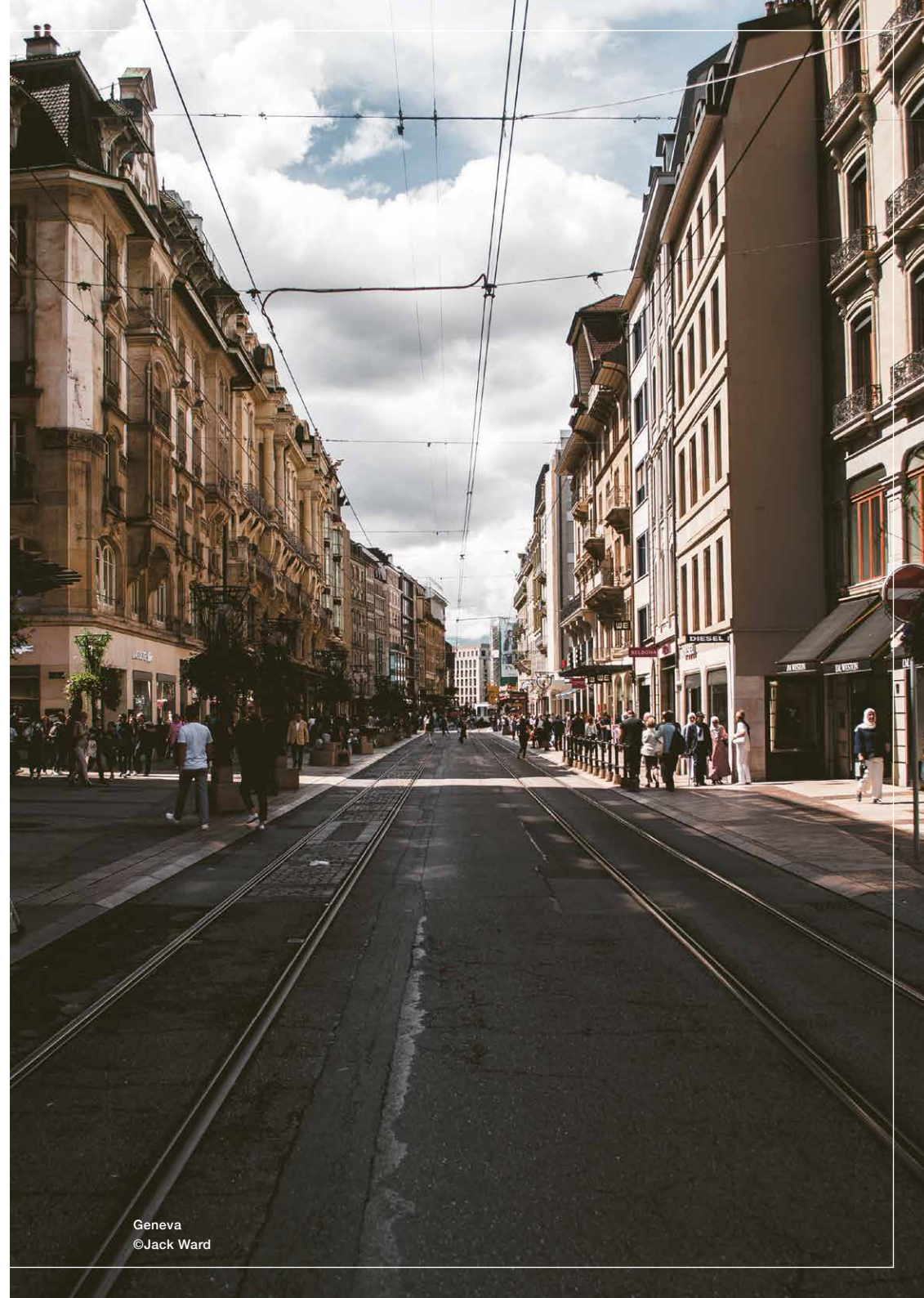
The transfer of real estate must be registered in the local land register. In order to do that, the underlying purchase agreement must be notarized by a public notary in the canton where the real estate is located.

# Family and Divorce Law

## Swiss Conflict of Law Rules

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

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



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

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

## Pre and Postnuptial Agreements

Both pre and postnuptial agreements are recognised in Switzerland. They usually address questions such as matrimonial property rights and the applicable law. However, certain issues require prior court approval before the agreement can have legal effect, for example, those relating to the preconditions for divorce and any arrangements relating to children or maintenance payments. Unlike other jurisdictions, Swiss law does not impose requirements as to financial disclosure, independent legal advice or a cooling-off period in order for a pre or postnuptial agreement to be valid.

Three different matrimonial property regimes are available under Swiss law. The default regime, applicable to married couples who have not expressly selected any other regime, is known as "participation in acquisitions". This regime distinguishes between individual property (e.g. pre-marital assets and gifts or inheritance received during the marriage) and property acquired by a spouse during the marriage (e.g. income from work and earnings from individual property). If the marriage comes to an end, each spouse maintains their individual property, while the acquired property is divided equally between them.

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

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

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

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

## Modern Families in Switzerland

### Same-Sex Marriage

The Federal Law on Registered Partnerships allows same-sex couples to enter into registered partnership, which confers certain rights that are comparable to marriage but differs with regard to important aspects such as the default marital property regime.

Since 2018, partners in same-sex relationships can adopt their stepchildren.

### Adoption

The Swiss authorities have jurisdiction to make adoption orders if the adopting person or spouse is resident in Switzerland. A revision of the Civil Code, effective since 1 January 2018, introduced more flexible rules on adoption. There are currently three methods of adoption: (i) joint adoption by spouses (but not registered partners), who are at least 28 years old and have shared a household for a minimum of three years; (ii) adoption by an individual who is at least 28 years old and is not married or living in a registered partnership; or (iii) adoption by a stepparent in a married couple, registered same-sex partnership or cohabiting relationship, in each case provided that the parenting couple has shared a household for a minimum of three years.

# Succession Planning

## Swiss Conflict of Law Rules

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

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



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

The courts here usually apply Swiss law to the estate of a deceased whose last place of residence was in Switzerland. A foreign national can, however, stipulate in a will that the laws of his or her country of nationality should govern his estate, provided that the deceased does not also hold Swiss citizenship. Such a choice of law clause can be a very effective planning tool.

## Intestacy Rules

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

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

## Wills and Inheritance Contracts

Swiss law recognises three forms of will: (i) holographic wills, which are

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

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

## Forced Heirship Rights

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

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

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



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

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

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

The rules on forced heirship are currently subject to discussion in the Swiss parliament. The Federal Council has published a draft bill, which would reduce the compulsory portion for descendants (to half instead of three quarters of the statutory share) and abolish the compulsory portion for the parents of a deceased. The resulting increase in a testator's freedom to plan his or her estate upon death would be a welcome change given that we are living in times of more complex familial structures (e.g. patchwork families).

## Trusts

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

As a consequence of ratification in 2007, foreign trusts, as defined in article 2 of the Hague Trust Convention, are fully recognised in Switzerland, irrespective of where the settlor resides. Switzerland has also enacted jurisdictional provisions so that Swiss courts can apply foreign trust law when adjudicating internal trust disputes

(although, depending on the specific circumstances, they may refuse to do so if the trust deed explicitly confers jurisdiction on a foreign court).

There is still no domestic case law to provide guidance on how a trust will be interpreted in the context of Swiss succession principles. As a result, the law in this area is quite uncertain. The Hague Trust Convention (pursuant to article 15 (c)) does not prevent the application of the Swiss rules on forced heirship regardless of the existence of any trust or trust statute. In other words, the Swiss forced heirship provisions would take precedence over any provisions of a trust or the laws applicable to that trust.

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

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

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

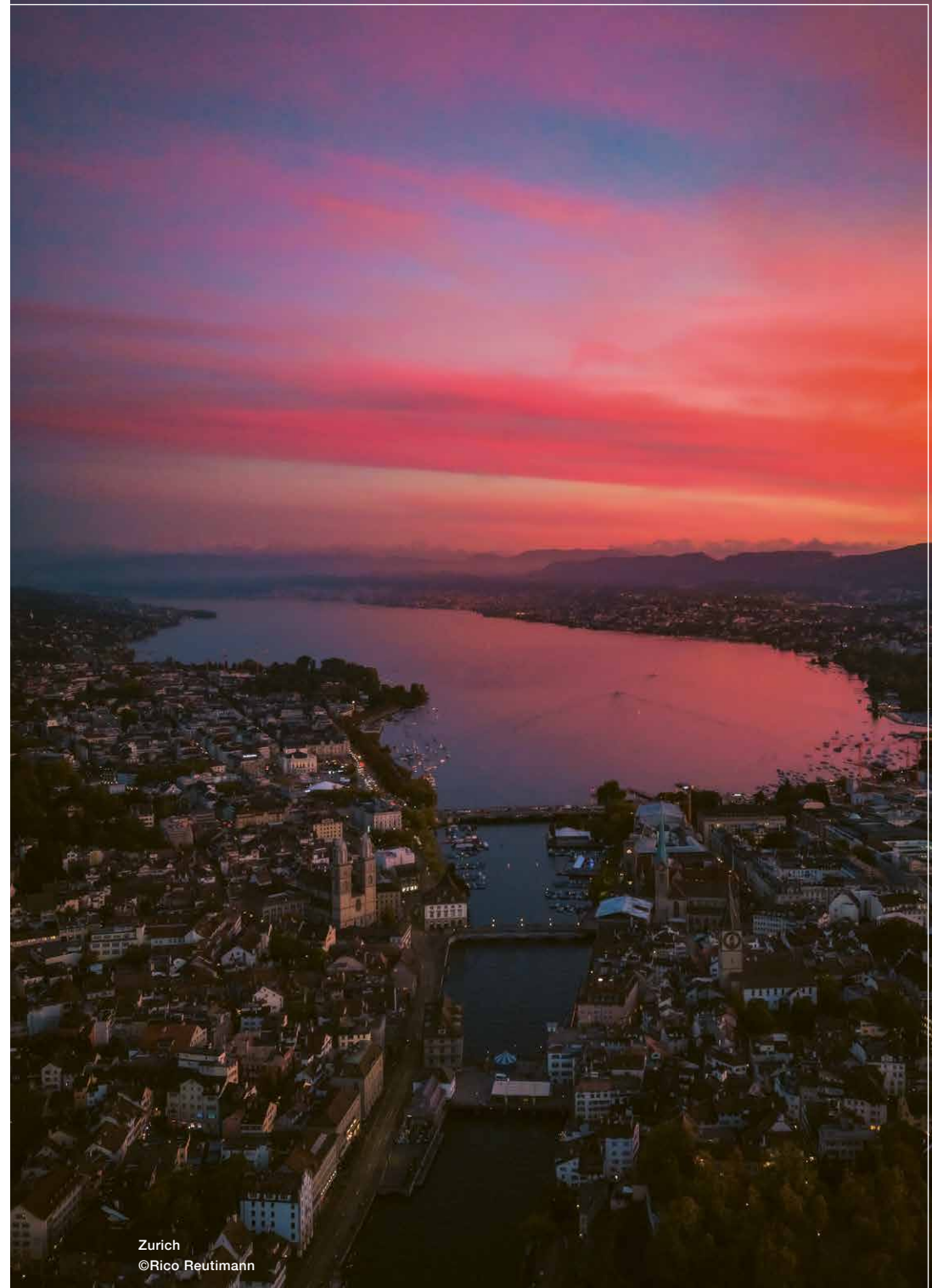
The settlor of an irrevocable discretionary trust is not liable for Swiss tax in respect of the trust assets if he was not resident in Switzerland at the time of settlement. In certain situations, this could continue to be the case even if the settlor becomes a Swiss resident after settlement. However,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

# Leaving Switzerland

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

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

This publication is provided for your convenience only and neither claims to be comprehensive nor does it provide legal or other advice.



# Discover more

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# Locations

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