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Switzerland

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Getting The Deal Through

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Private Client

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Quick reference guide enabling side-by-side comparison of local insights, including into tax; trusts and foundations; same-sex marriages; civil unions; succession; capacity and power of attorney; immigration; and recent trends.

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TAX

Residence and domicile

How does an individual become taxable in your jurisdiction?

Individuals domiciled or resident in Switzerland are subject to unlimited taxation in Switzerland.

The concepts of domicile and residence may have different meanings and different translations in the respective languages. In the context of the present contribution, an individual is considered domiciled in Switzerland if he resides there with the intention of permanent establishment (or when federal law gives him or her a special legal domicile there). The intention is decisive, while the duration of stay, in itself, is not. An individual is considered resident in Switzerland for tax purposes if he or she resides there without any appreciable interruption (1) at least 30 days in gainful employment or (2) at least 90 days without gainful employment. In the case of residence, the only relevant matter is the duration; the intention is not relevant.

Individuals who are neither domiciled nor resident in Switzerland for tax purposes may nevertheless be subject to tax in Switzerland, but in this hypothesis only to limited taxation. This is the case if such individuals (1) are owners, associates or usufructuaries of companies in Switzerland, (2) have business establishments in Switzerland, (3) are owners of funds in Switzerland or have real or personal rights of enjoyment over them or (4) trade in real estate located in Switzerland or act as intermediaries in these real estate transactions.

Besides the aforementioned internal rules, in the international context it is necessary to consider the provisions of the double taxation agreements concerning income tax concluded by Switzerland (in particular, article 4 thereof and respective tie-breaker rules).

Law stated - 30 September 2021

Income

What, if any, taxes apply to an individual's income?

Income tax is levied at federal, cantonal and communal level, at progressive tax rates. While federal tax is the same all over Switzerland, cantonal and communal tax rates vary substantially (and, moreover, communal taxes of the same commune may vary each year). The maximum total tax rate among the various cantons and communes is currently around 40–45 per cent and the minimum is around 20–25 per cent.

In principle, the same income tax rate applies to all kinds of income.

The general principle is that all kinds of income (employment income, pensions, lease, interests, royalties, dividends, etc) are actually added up in order to assess the taxable income and the applicable tax rate. In case of foreign source income allocated for taxation to a foreign country by virtue of a double taxation agreement, the respective amount is taken into account in Switzerland for the purpose of assessing the tax rate then applied (only) to the income subject to tax in Switzerland.

The main exceptions to the aforesaid general rule of same taxation for all kinds of income are (1) qualifying dividends (dividends deriving from participation of at least 10 per cent of the capital benefit of a reduced taxation), (2) capital payments from provident funds (reduced taxation, with very relevant difference among cantons), (3) some specific kinds of income that are expressly exempted from income tax (eg, inheritances, donations, payments by private redeemable insurance policies, reimbursements for moral wrong, etc) and (4) capital gains.

Tax law provides for certain specific deductions for the purpose of computing the total taxable income and specific rules apply for individuals taxed on the basis of the respective book-keeping.

Finally, a non-Swiss individual who meets the respective requirements may benefit in most cantons from the lump sum taxation. Such requirements vary between EU and non-EU citizens and also, in practice, among the cantons. However, it is fair to indicate that the most relevant requirement, or condition, applicable to any applicant in any canton is the absence of any working activity in Switzerland. In the case of lump sum taxation, income tax is basically computed on effective yearly expenses of the taxpayer, instead of income. There is however a minimum yearly taxable income, which is currently 40,000 Swiss francs (for non-EU citizens, however, in practice to be further discussed); moreover there are several computations of control performed each year by the Swiss tax authorities to assess the taxable income for the specific tax year.

Besides the aforementioned internal rules, in the international context it is necessary to consider the provisions of the double taxation agreements concerning income tax concluded by Switzerland, which in principle allocate the right to tax to the different states depending on the kind of income and, at the same time, impose upon both to eliminate any double taxation.

Law stated - 30 September 2021

Capital gains

What, if any, taxes apply to an individual's capital gains?

The general principle is that capital gains realised with the sale of private moveable assets are exempted from taxation. There are, however, several exceptions to this general principle, sometimes deriving from express provision of the law and sometimes deriving from (increasingly strict) case law. The main exceptions to exemption are the following: (1) a person buys and sells securities from his or her private portfolio according to extraordinary methodology, intensity, frequency, etc., and he or she may be considered a professional trader (in securities) (2) a person sells shares to a company of which the seller, after the sale, controls at least 50 per cent, for a price higher than the nominal value (transposition); (3) a person sells at least 20 per cent of the capital to a third party and in the following five years the company distributes, with the collaboration of the seller, substance not necessary for the exercise of the company's business and such substance not necessary existed at the time of sale and at that time could have been distributed as a dividend under commercial law (indirect partial liquidation); (4) a person sells shares to the company that issued them ('own shares'), in view of a capital reduction or the person sells the 'own shares' not in view of a capital reduction but in this case the company does not resell these shareholdings within two to six years (direct liquidation). In all these cases the respective capital gain is considered ordinary income deriving from movable assets and therefore subject to ordinary taxation.

Capital gains realised with the sale of private immovable assets located in Switzerland are subject to a special taxation levied at cantonal and communal level. Taxable basis and tax rates vary among the cantons, but in general the longer the duration period, the lower applicable tax rate.

Besides the aforementioned internal rules, in the international context it is necessary to consider the provisions of the double taxation agreements concerning income tax concluded by Switzerland (in particular, article 13 thereof).

Law stated - 30 September 2021

Lifetime gifts

What, if any, taxes apply if an individual makes lifetime gifts?

Donation tax is levied at cantonal level only.

Taxable basis and tax rates vary among the cantons, but in general tax rates are progressive and increase with the the donation's value and moreover with the receding of kinship between donor and done (depending on the canton,

important donations between third parties may be subject to more than about 40 per cent taxation). Donations to spouses and civil partners are tax free in all cantons; donations to direct descendant and ascendant are tax free in most cantons. Only the cantons of Schwyz and Luzern do not impose any donation tax.

In general, donation tax is due by the donee; the donor is, however, jointly liable with the donee.

Most cantons only have the right to tax if the donor is resident in the canton (but not if only the donee is resident there); there are however cantons that may impose in both cases. Besides that, most cantons have the right to tax if the object of the donation is a real estate situation in their territory.

If donor and donee are resident in different cantons, in order to determine which canton has the right to tax it is necessary to refer to case law of the supreme federal court (in principle, the right to tax pertains for moveable assets the canton of residence of the donor and for immoveable assets the canton of situation of the real estate).

Besides the aforementioned internal rules, in the international context it is necessary to consider the provisions of the (few) double taxation agreements on donations concluded by Switzerland.

Law stated - 30 September 2021

Inheritance

What, if any, taxes apply to an individual's transfers on death and to his or her estate following death?

Inheritance tax is levied at cantonal level only.

With respect to taxable basis, tax rates and principles of taxation at intercantonal and international level, the rules are the same as for donation taxes. Inheritance transfers to spouses and registered partners are tax free in all cantons; inheritance transfers to direct descendant and ascendant are tax free in most cantons. Only the canton of Schwyz does not impose any inheritance tax.

Law stated - 30 September 2021

Real property

What, if any, taxes apply to an individual's real property?

Real estate is always subject to taxation in the canton in which it is located.

Real estate is subject to wealth tax, which is levied at cantonal level only, at progressive tax rates. Capital amount of mortgages is deductible.

In addition to this there may be several rather limited taxes on the value of the real estate, levied at cantonal and communal level.

In the event of sale, donation or inheritance of the real estate the respective capital gain is taxed (capital gains, lifetime gifts, inheritance).

Income deriving from lease of real estate directly owned by individuals resident in Switzerland is subject to ordinary income tax.

If the taxpayer is living in his or her own property, he or she is taxed on the rental income, which is in principle the income that he or she would receive pursuant to arm's-length principles should he or she rent the property. Passive interests on mortgages and costs are deductible (if the individual resident in Switzerland rents the apartment or the house, he or she cannot deduct the amount of the lease).

Finally, if the individual owns real estate not directly but through a Swiss or foreign vehicle, substantially different rules apply for tax purposes.

Besides the aforementioned internal rules, in the international context it is necessary to consider the provisions of the double taxation agreements concerning income tax concluded by Switzerland (in particular, articles 6, 13 and 22 thereof).

Law stated - 30 September 2021

Non-cash assets

What, if any, taxes apply on the import or export, for personal use and enjoyment, of assets other than cash by an individual to your jurisdiction?

In principle, import of goods is subject to ordinary Swiss VAT at 7.7 per cent.

Special rules and lower VAT is applicable to alcoholic beverages, tobacco and certain specific agricultural products.

Import for personal use are exempted from VAT on imports up to 300 Swiss francs per person and per day.

Moreover, import of goods, irrespective of their value, in the context of personal relocation in Switzerland are exempted from VAT on imports provided that certain specific conditions are met (formal requirements and evidence of prior ownership in the previous country for a specific minimum period of time).

Law stated - 30 September 2021

Other taxes

What, if any, other taxes may be particularly relevant to an individual?

Individuals resident in Switzerland are subject to wealth tax, which is levied at cantonal level only, at progressive tax rates. All kind of assets and goods (bank accounts, participations, real estates, cars, boats, gold, planes, etc) are added up: private debts are in principle deductible. Tax rates vary substantially from one canton to another (and, moreover, communal taxes of the same commune may vary each year). The maximum total tax rate among the various cantons and communes is currently around 1 per cent and the minimum is around 0.1 per cent.

Lump sum taxpayers are also subject to wealth tax, but pursuant to quite different principles, which vary among the cantons.

VAT is also due at federal level, with a standard tax rate of 7.7 per cent and some exceptions subject to a lower tax rate.

Law stated - 30 September 2021

Trusts and other holding vehicles

What, if any, taxes apply to trusts or other asset-holding vehicles in your jurisdiction, and how are such taxes imposed?

Many (cumulative) facts and circumstance are to be taken into account in relation to taxation of trusts. In particular: (1) kind of trust: revocable, irrevocable, discretionary, fixed interest; (2) residence of the different 'participants' namely, settlor and beneficiaries; (3) for individuals resident in Switzerland (ie, settlor and beneficiaries) kind of taxation: ordinary taxation or lump sum taxation; (4) location of the assets and income of the trust: Swiss source or foreign source; (5) kind of assets: moveable or immoveable assets; and (6) practice applied by each tax administration to the

combination of the above mentioned facts and circumstances.

To be noted that revocability or irrevocability of a trust is assessed by the tax authorities following their own rules and principles, irrespective of legal aspects.

Assuming that the settlor and beneficiaries are resident in Switzerland and the trust only owns moveable assets (Swiss and non-Swiss), the main principles and rules could be summarised as follows:

- Revocable trusts: these trusts are transparent for tax purposes. Establishment and contribution are therefore no-events for tax purposes. The assets continue to be considered as owned by the settlor. Distributions and liquidations by the trust are considered as performed directly by the settlor. In the case of death of the settlor, same rule applies.
- Irrevocable discretionary trusts: taxation at the establishment depends on the canton and on whether the settlor is subject to ordinary taxation or to lump sum. In certain Cantons the trust is ignored, (ie, is treated as if revocable); in other Cantons, the trust is accepted as such and therefore the contributions of the settlor to the trust are subject to donation tax. At the time of distributions, if the trust is considered as revocable, the consequences are the same as in case of revocable trusts (see above); if the trust is recognised as such also for tax purposes, the taxation of beneficiaries resident in Switzerland depend on whether they are subject to lump sum taxation or ordinary taxation. If they are subject to lump sum taxation, the respective rules apply (Swiss source or foreign source distribution); if they are subject to ordinary taxation, in principle, they are subject to income tax, but special rules may apply in the event the object of the distribution is the capital originally contributed to the trust by the settlor. At the time of settlor death, if the trust was transparent, see above (tax rate, however, to be checked). If not transparent, in principle there is no event for tax purposes.
- Irrevocable fixed interest trusts: in principle trust is accepted as such and therefore donation tax at the establishment, unless exemption. After the establishment, beneficiaries resident in Switzerland and under ordinary taxation taxed as income, unless they can bring evidence that (1) the subject matter of the reimbursement is capital of the trust contributed by the settlor or (2) the origin of the income was capital gain. At the time of the settlor's death, in principle there is no event for tax purposes.

Law stated - 30 September 2021

Charities

How are charities taxed in your jurisdiction?

Swiss charities (typically foundations) are, in principle, exempted from taxation at federal, cantonal and communal level, provided that they have a truly public or charitable purpose and they meet some additional conditions set forth by the tax authorities.

Donation and inheritances to exempted charities are also exempted from donation and inheritance tax.

Law stated - 30 September 2021

Anti-avoidance and anti-abuse provisions

What anti-avoidance and anti-abuse tax provisions apply in the context of private client wealth management?

Switzerland has one of the broadest network of double taxation agreements world-wide.

In the international context, most anti-abuse provisions concern the right of the individuals resident in Switzerland and

holding participations in foreign entities or individuals resident abroad and holding participations in Swiss entities, to apply double taxation agreements concluded by Switzerland and therefore reduce or eliminate the respective withholding tax. In this respect, legislation, case law and international rules tend to mainly focus on the concepts of 'beneficial owner', and 'abuse of law' (or the like). Tests like limitation on benefit or principal purpose test are applied. Without entering into details, the idea is that an individual is only entitled to apply double taxation agreements if he is the real beneficial owner of the entity and the entity was not established only or mainly for tax purposes and moreover the same entity cannot be considered as a conduit company or the like.

In addition to this, Swiss courts widely apply concepts like abuse of law, tax evasion, economic interpretation of the facts in almost all areas of taxations.

Law stated - 30 September 2021

TRUSTS AND FOUNDATIONS

Trusts

Does your jurisdiction recognise trusts?

There is currently no domestic law on trusts in Switzerland. However, Swiss courts have recognised foreign trusts for many years. Switzerland ratified the Hague Convention on the Law Applicable to Trusts and on their Recognition of 1 July 1985 with legal effect as of 1 July 2007. Foreign trusts properly constituted under the applicable law are thus recognised in Switzerland. The Swiss Private International Law Act as well as the Federal Debt Enforcement and Bankruptcy Act were amended further to such ratification to achieve, in particular, recognition of foreign court orders relating to trusts and trust property being separate from personal assets of the trustee.

Law stated - 30 September 2021

Private foundations

Does your jurisdiction recognise private foundations?

The Swiss Civil Code (SCC) provides for foundations in its articles 80 to 89a. Switzerland is a favoured jurisdiction for charitable foundations set up in accordance with these provisions. Family foundations are only permitted in a strict framework and consequently rarely established in practice. Article 335 paragraph 1 SCC provides that they are only valid if they pursue to cover the costs of education, endowment or support of family members or similar purposes. Family foundations that would seek to support family members in a more liberal way are not permitted.

Law stated - 30 September 2021

SAME-SEX MARRIAGES AND CIVIL UNIONS

Same-sex relationships

Does your jurisdiction have any form of legally recognised same-sex relationship?

Same-sex partners can formalise their relationship by entering into a 'registered partnership', which is formed by a declaration of the two partners at the civil register office, following a specific application procedure. To enter into a registered partnership in Switzerland, one or both of the partners must be a Swiss national or reside in Switzerland.

For tax and succession purposes, registered partners are treated as a married couple.

Unlike spouses however, registered partners are not allowed to adopt jointly or have children by artificial insemination.

A person can adopt his or her partner's child if the partners have been living together for at least three years.

On 26 September 2021, the Swiss people accepted the 'marriage for all' legislative amendment by more than 64 per cent of voters. Same-sex couples will now have the possibility to enter into a marriage, like heterosexual couples. Same-sex couples will also be able to adopt a child jointly, under the same conditions as heterosexual couples. In addition, married women couples will be able to use sperm donations under the conditions provided for by the law. Finally, it will no longer be possible to register new partnerships, but registered partnerships already existing may be converted to marriage. The legislative amendments should come into force in the course of 2022.

Law stated - 30 September 2021

Heterosexual civil unions

Does your jurisdiction recognise any form of legal relationship for heterosexual couples other than marriage?

Currently, Swiss law does not provide for any specific legal institution for heterosexual couples other than marriage. Registered partnership is only open to same-sex couples. Heterosexual couples who do not wish to get married can, however, organise their affairs and relationship in a bilateral agreement.

Law stated - 30 September 2021

SUCCESSION

Estate constitution

What property constitutes an individual’s estate for succession purposes?

Upon the death of the decedent, the heirs acquire the estate of the decedent in its entirety by operation of the law. The estate is thus composed of all movable and immovable assets as well as limited rights in rem and claims owned by the decedent as of his death. Debts of the decedent as well funeral expenses, administrative costs and taxes are to be deducted from the estate. If the decedent was married, the matrimonial property regime of the spouses must be liquidated to determine whether the decedent has a debt or claim resulting thereof vis-à-vis his or her spouse. Under Swiss private international law rules, spouses have a certain freedom to choose the law applicable to their matrimonial property regime. If they are subject to Swiss law, they will be subject to participation in acquisitions, unless they have chosen community of property or separation of estates by way of a matrimonial property agreement.

Law stated - 30 September 2021

Disposition

To what extent do individuals have freedom of disposition over their estate during their lifetime?

In general, an individual has freedom of disposition of his or her assets during his or her lifetime. However, spouses are protected against donations made by their deceased spouse without their consent within five years prior to dissolution of the marital property regime as such donations are virtually added to property acquired during marriage. Also, heirs entitled to a compulsory portion are protected as they may file a claim to protect their rights in the estate.

Law stated - 30 September 2021

To what extent do individuals have freedom of disposition over their estate on death?

Under Swiss law the descendants, the surviving spouse or registered partner and, if there are no descendants, the parents of the decedent are entitled to a compulsory portion of the estate (ie, have a right which they cannot be deprived of to inherit a certain portion of the estate of the decedent). The decedent must respect these compulsory portions and is free to dispose of his or her estate up to the disposable portion only. The compulsory portions amount:

- for descendants, to three quarters of their intestate share;
- for the surviving spouse or registered partner to one half of his or her intestate share; and
- for the father or mother, to one half of his or her intestate share.

An heir may, however, renounce to all or part of his or her compulsory portion with or without monetary compensation by way of inheritance agreement concluded with the testator.

A revision of the inheritance law provisions of the Swiss Civil Code has recently been approved by the Swiss Parliament. Under this revision the compulsory portion of descendants is to be reduced from three quarters to one half of their intestate share and the compulsory portions of parents is cancelled entirely. This revision will come into force on 1 January 2023.

Case	Intestate share	Compulsory portion (currently)	Disposable portion (currently)	Compulsory portion (revision)	Disposable portion (revision)
Surviving Spouse/ Partner only	1	½ of 1 = ½	½	½ of 1= ½	½
Descendants and surviving Spouse/ Partner	1/2 1/2	3/4 of 1/2 = 3/8 1/2 of 1/2 = 1/4	3/8	½ of ½ = ¼ ½ of ½ = ¼	1/2
Descendants only	1	3/4 of 1 = 3/4	1/4	½ of 1= 1/2	1/2
Parents and surviving Spouse/Partner	1/4 (2 x 1/8) 3/4	1/2 of 1/4 = 1/8 (2x 1/16) 1/2 of 3/4 = 3/8	1/2	- ½ of ¾ = 3/8	5/8
Parents only	1 (2 x 1/2)	1/2 of 1 = 1/2 (2 x 1/4)	1/2	-	1

Law stated - 30 September 2021

Intestacy

If an individual dies in your jurisdiction without leaving valid instructions for the disposition of the estate, to whom does the estate pass and in what shares?

Heirs are divided into degrees (‘parentèle’; ‘parentel’), which determine the order of inheritance. There are three degrees:

the descendants (first degree), the parents and their descendants, whether common or not common (second degree), and the grandparents and their descendants (third degree).

In order to determine who will be the statutory heirs of the decedent and the share of each such statutory heir (the 'intestate share'), the following principles apply:

- Where there are relatives who belong to different degrees, relatives of a closer degree exclude relatives of a more distant degree (eg, relatives of the first degree exclude relatives of the second and third degrees).
- Within a degree, living relatives exclude their descendants.
- Within a degree, should an heir fall out of consideration (due to prior death, renunciation, unworthiness or disinheritance), the children of such heir will inherit the share of the said heir.
- Each degree is subdivided into stirpes. A stirps is constituted by a member of the degree and his descendants; for example, in the first degree, each child of the decedent and the descendants of such child form a stirps. The estate is divided equally between the stirpes.
- Second and third degrees are divided into lines. Each 'ascendant' related at the same level with the decedent, together with the descendants of such 'ascendant' form a line. Thus, the second degree has two lines: one constituted by the father of the decedent and his descendants and one constituted by the mother of the decedent and her descendants. Each line is entitled to half of the estate. If there are no heirs in one line, the other line is entitled to the whole estate. Within the third degree, four lines can be identified, each grandparent and his or her descendants forming a line. Each line is entitled to a quarter of the estate. If there are no heirs in one line, the quarter of such line is divided equally between the other lines.

The surviving spouse or surviving registered partner of a decedent is also a statutory heir. The intestate share of the surviving spouse or registered partner amounts to:

- one half of the estate if he or she must share with descendants (the descendants being entitled to the other half);
- three quarters of the estate if he or she has to share with heirs of the second degree (the latter being entitled to the remaining quarter); or
- the entire estate if no heirs of the second degree exist. If the decedent has a surviving spouse or registered partner, members of the third degree do not become heirs of the decedent.

If there are no statutory heirs, the estate devolves to the canton of the decedent's last residence or to the municipality designated by such canton's legislation.

Law stated - 30 September 2021

Adopted and illegitimate children

In relation to the disposition of an individual's estate, are adopted or illegitimate children treated the same as natural legitimate children and, if not, how may they inherit?

Adopted and illegitimate children have the same legal rights and obligations as heirs as legitimate children.

Law stated - 30 September 2021

Distribution

What law governs the distribution of an individual's estate and does this depend on the type of property within it?

The Swiss Private International Law Act determines the law that governs the distribution of an individual's estate. If a person of Swiss nationality dies with his or her last residence in Switzerland, his or her estate, whether movable or immovable and whether situated in Switzerland or abroad, will be governed by Swiss substantive succession law. The estate of a foreign national who dies with his or her last residence in Switzerland will, in principle, be governed by Swiss law. Such foreign national may, however, choose by way of a will or inheritance agreement to submit his or her estate to the law of his or her nationality, or should he or she have several, to the law of one of them. Such submission is void if at the time of death the decedent no longer had such nationality or had acquired Swiss nationality. If the decedent is of Swiss nationality and had his or her last residence abroad, the inheritance estate will be, from a Swiss perspective (ie, if Swiss authorities have to determine the applicable law), governed by the law referred to by the private international law rules of the state of his or her residence.

A draft revision of the Swiss Private International Law Act inheritance provisions is currently before the Swiss Parliament. Among others, it will increase the freedom of the testator to choose the law governing his or her estate.

Law stated - 30 September 2021

Formalities

What formalities are required for an individual to make a valid will in your jurisdiction?

Swiss law foresees two types of testamentary dispositions: wills and inheritance agreements. Whereas a will is a unilateral legal act of the testator, an inheritance agreement is a bilateral act between the testator and another person (the contracting party) in which the testator may undertake to leave part or the whole of his or her estate or a legacy to the contracting party or to a third party. An heir of the testator can also enter into an inheritance agreement with the testator to renounce to all or part of his or her rights of inheritance in the estate of the testator with or without monetary compensation.

Wills can be made by public deed, in holographic form or in oral form. A last will in holographic form must be handwritten from beginning to end, dated and signed by the testator. The date must include the indication of the year, month and day of the execution of the will. A will made as a public deed is drawn up in the presence of two witnesses by a public official, a notary or another person authorised for this purpose under cantonal law. Under exceptional circumstances such as imminent death, communication breakdown, epidemic or war, a will may be established in oral form.

To be valid, an inheritance agreement must comply with the formalities required for a will made in the form of a public deed.

Law stated - 30 September 2021

Foreign wills

Are foreign wills recognised in your jurisdiction and how is this achieved?

Foreign wills and other testamentary dispositions (inheritance agreements and mutual wills) are widely recognised under Swiss private international law provisions. Indeed, by way of the application of the Hague Convention on the

Conflicts of Laws relating to the Form of Testamentary Dispositions of 1961 – applicable erga omnes – a will or (by analogy) other testamentary disposition shall be valid if its form complies with the substantive law of:

- the place where the testator made it;
- a nationality possessed by the testator, either at the time when he or she made the disposition, or at the time of his or her death;
- a place in which the testator had his or her domicile at the time when he or she made the disposition or at the time of his or her death;
- the place in which the testator had his or her habitual residence either at the time when he or she made the disposition, or at the time of his or her death; or
- so far as immovables are concerned, of the place where they are situated.

Law stated - 30 September 2021

Administration

Who has the right to administer an estate?

In general, an estate is administered by the heirs who must take all decisions unanimously. However, if an executor has been appointed by the decedent or an official administrator or liquidator has been appointed by the competent authority, then they will administer the estate.

Law stated - 30 September 2021

How does title to a deceased's assets pass to the heirs and successors? What are the rules for administration of the estate?

As a result of the principle of universality of succession, upon the death of the decedent, the heirs acquire the estate in its entirety by operation of the law. Thus, subject to statutory exceptions, all rights and obligations of the decedent (including claims, rights of ownership, limited rights in rem, rights of possession and debts) are vested in the heirs even though they may not know this or wish for it. Where there are several heirs, they form a community of heirs. The estate will be vested in them jointly. The community of heirs is subject to rules governing joint ownership. Each heir will only receive his or her share of the estate after division of the estate has taken place.

Law stated - 30 September 2021

Challenge

Is there a procedure for disappointed heirs and/or beneficiaries to make a claim against an estate?

Heirs who are entitled to a compulsory portion of the estate and who do not receive such portion may make an abatement claim for proportionate reduction of testamentary disposition or inter vivos dispositions violating their compulsory portion. Such claim must be filed against the person benefitting from the said dispositions (and not against the estate itself).

Heirs or legatees may also claim that a testamentary disposition is null and void for incapacity of the testator at the time it was made, lack of free will, illegality or immorality. Such claim for annulment must be filed by any interested heir or legatee against the person or persons benefitting from the testamentary disposition.

Law stated - 30 September 2021

CAPACITY AND POWER OF ATTORNEY

Minors

What are the rules for holding and managing the property of a minor in your jurisdiction?

As long as the parents have parental responsibility over the minor child, they have the right and duty to administer the child's property.

However, the child who has capacity to consent manages and enjoys the benefits of all fruits of his or her own labour, and of those of his or her assets that are released by his or her parents for use in the child's professional or business activities.

The parents may use the income from the child's property for the child's maintenance, upbringing and education and, where equitable, for the requirements of the household. However, in order to withdraw amounts from the minor's fortune, the parents must obtain the consent of the child protection authority.

Where there is no adequate guarantee that the child's property will be diligently managed, the child protection authority takes the necessary measures to protect it (issue instructions regarding such management, order an inventory to be prepared or regular accounts and reports to be submitted, order the parents to deposit the property or furnish security). If these measures are not sufficient to avert a threat to the child's property, the child protection authority shall withdraw the management from the parents and appoint a child welfare advocate to manage it.

Law stated - 30 September 2021

Age of majority

At what age does an individual attain legal capacity for the purposes of holding and managing property in your jurisdiction?

A person reaches the legal age of majority at 18 years old. The parents' administration of the child's property ends at such time and they must hand over the child's property, together with a final statement of account, to the adult child.

Law stated - 30 September 2021

Loss of capacity

If someone loses capacity to manage their affairs in your jurisdiction, what is the procedure for managing them on their behalf?

If support for a person in need offered by his or her family, other closely related persons or private or public services is or proves to be insufficient, or where the person in need is no longer capable of judgement, has failed to make any or sufficient arrangements for his or her own care and the statutory measures are insufficient, the adult protection authority shall order a measure.

There are different types of measures.

Namely, the adult protection authority will establish a deputyship if an adult:

- due to a learning disability, a mental disorder or a similar inherent debility is wholly or partially unable to manage his or her own affairs, or

- due to a temporary loss of the capacity of judgement or temporary absence is neither able to take care of matters that must be dealt with, nor has appointed a representative.

The deputyship shall be established at the request of the person concerned or a closely associated person or ex officio. For each case, the adult protection authority shall determine which type of deputyship to order (assistance deputyship, representative deputyship, advisory deputyship, combination of deputyships or general deputyship) and define the scope of the deputy's responsibilities and tasks, according to the protection needs of the concerned person and the areas to be covered by the contemplated measure (personal care, management of his or her assets or legal matters).

A person with capacity to act may also instruct an individual or legal entity to take responsibility for his or her personal care or the management of his or her assets or to act as his or her legal agent in the event that he or she is no longer capable of judgement, by drawing up an 'advance care directive'. In it, the concerned person must define the tasks that are to be assigned and may issue instructions on how these tasks are to be fulfilled.

If a person who is no longer capable of judgement did not execute an advance care directive and that no deputy has been appointed, the spouse or registered partner may, under certain conditions, have a statutory right to act as that person's representative. This right includes all legal acts that are normally required to meet the need for support; due management of income and other assets; and the right to open and deal with post, if necessary.

Law stated - 30 September 2021

IMMIGRATION

Visitors' visas

Do foreign nationals require a visa to visit your jurisdiction?

As a preliminary remark, please note that the principles described apply in normal times. Due to the covid-19 pandemic, exceptional entry restrictions or conditions may apply. These being in constant evolution, they will not be detailed below; please refer to the information published on the website of the Swiss State Secretariat for Migration.

The visa requirement to visit Switzerland mainly depends on the nationality of the concerned individual. A distinction is made between nationals of Schengen states, the European Union (EU) and the European Free Trade Association (EFTA) (as well as nationals from microstates associated to the Schengen Area, such as Monaco), on the one hand, and nationals of other countries (third-state nationals), on the other hand.

Citizens of Schengen states (which include the EFTA states and 22 of the 27 EU members) and the EU, to which the Agreement on the free movement of persons applies, may enter Switzerland for touristic or other accepted purposes without a visa for a visit of up to 90 days (within a 180-day period). If they intend to work during their stay, specific rules apply. For a stay over 90 days, they will not need a visa, but will require an authorisation (residence permit) from the migration authority of the canton concerned.

Regarding third-state nationals, the conditions for entry to Switzerland vary in relation to their nationality (depending on whether Switzerland has entered into a short-stay visa waiver agreement with the relevant country), the reasons for the intended stay (tourism, visit, employment, studies, etc) and the length of the stay. Furthermore, third-state nationals holding a valid residence permit issued by a Schengen state may be exempt of the visa obligation for stays not exceeding 90 days in a 180-day period (depending on the type of residence permit they hold).

For a stay involving gainful employment, both a visa and a work permit are usually required.

The Swiss State Secretariat for Migration publishes, on its website, a complete list detailing the visa requirements for each nationality.

Law stated - 30 September 2021

High net worth individuals

Is there a visa programme targeted specifically at high net worth individuals?

There is no visa programme targeted specifically at high net worth individuals in Switzerland.

However, high net worth individuals may potentially more easily fulfill the requirements to obtain a visa, given that third-country nationals must have sufficient financial resources to cover the entire duration of the intended stay as well as the return trip to their home country.

Moreover, some provisions regarding obtaining a residence permit may be of particular relevance to high net worth individuals.

EU or EFTA nationals who are not gainfully employed, such as retirees, have the right to obtain a residence permit if the following conditions are met:

- they have sufficient financial resources to cover the cost of living in Switzerland; and
- they have a health insurance policy that also includes accident coverage.

The residence permit is issued for five years and is automatically renewed as long as the above-mentioned conditions continue to apply.

Third-state nationals without gainful employment in Switzerland are subject to stricter rules than EU or EFTA-nationals. Retirees, persons seeking medical treatment or students may be granted a resident permit under specific conditions, amongst others the existence of sufficient financial means. For example, retirees may be granted a residence permit if:

- they are 55 years old at least;
- they have special personal relations to Switzerland (eg, they remained in Switzerland in the past for relatively long stays or they have close relationships with near relatives in Switzerland);
- they have the required financial means; and
- they have no gainful employment in Switzerland or abroad (except for the management of their own assets).

Derogations from these admission requirements are permitted to take into account important public interests. Thus, in specific cases, the cantons may grant a residence permit to a third-state national if he or she agrees to pay a substantial amount of taxes.

The residence permit for non-EU or non-EFTA nationals is generally valid for one year and is renewable on a year-to-year basis.

Law stated - 30 September 2021

UPDATE & TRENDS

Key developments

Are there any proposals in your jurisdiction for new legislation or regulation, or to revise existing legislation or regulation, in areas of law relevant to high-net worth individuals, particularly those coming to or investing in your jurisdiction? Are there any other current developments or trends relevant to such individuals that should be noted?

On 26 September 2021, a law change to allow same-sex couples to marry was accepted by Swiss voters. Same-sex couples will now have the same right to marriage as heterosexual couples and, inter alia, will also have the right to adopt. The legislative amendment should come into force in the course of 2022.

A revision of the inheritance law provisions of the Swiss Civil Code has recently been approved by the Swiss Parliament. One of the main amendments is to reduce the compulsory portions of descendants from three quarters to one half and cancel completely the compulsory portions of parents.

The inheritance law provisions of the Swiss Private International Law Act are also currently being discussed by the Swiss Parliament. The aim of the revision is to increase compatibility of the Swiss Private international Law Act with provisions of the EU Succession Regulation as well as to take into account certain clarification requirements that became necessary over the years.

The Swiss Parliament has instructed the Federal Council to create the legal basis for trusts within Swiss law. A preliminary draft law is expected to be issued early 2022.

Law stated - 30 September 2021

Jurisdictions

Andorra	Cases & Lacambra Abogados SLP
Australia	Kalus Kenny Intelex
Austria	DORDA
Belgium	Loyens & Loeff
Bermuda	Butterfield Trust
Cayman Islands	Butterfield Trust
Colombia	Rimôn
Cyprus	Patrikios Pavlou & Associates LLC
Germany	POELLATH
Guernsey	Butterfield Trust
Hong Kong	Charles Russell Speechlys LLP
Ireland	Matheson
Japan	Anderson Mōri & Tomotsune
Liechtenstein	Gasser Partner
Malta	GVZH Advocates
Monaco	CMS Pasquier Ciulla Marquet Pastor Svara & Gazo
Panama	Pardini & Asociados
Spain	Cases & Lacambra Abogados SLP
Switzerland	Kellerhals Carrard
United Kingdom - England & Wales	McDermott Will & Emery
USA	Holland & Knight LLP