COUNTRY COMPARATIVE GUIDES 2024

The Legal 500 Country Comparative Guides

Switzerland PRIVATE CLIENT

Contributor

Blum & Grob Attorneys at Law Ltd

Dr. Natalie Peter

Partner | n.peter@blumgrob.ch

This country-specific Q&A provides an overview of private client laws and regulations applicable in Switzerland.

For a full list of jurisdictional Q&As visit **legal500.com/guides**

SWITZERLAND
PRIVATE CLIENT

1. Which factors bring an individual within the scope of tax on income and capital gains?

An individual is considered resident in Switzerland if he or she takes up residence with the *intention of permanently staying, even if the residence is limited to a certain period. A resident individual is subject to unlimited taxation in Switzerland on his or her worldwide income and assets.*

An individual can also be subject to unlimited taxation if he or she is physically present in Switzerland for a minimum of 30 days, and is in gainful employment, or if he or she is physically present for a minimum of 90 days in Switzerland without being gainfully employed.

Individuals resident outside Switzerland may be subject to limited taxation if they have economic ties to Switzerland (e.g. real property, business premises).

Capital gains realised from the sale of private moveable assets are exempt from income taxation. Consequently, realised losses are not deductible. Gains realised on the sale of real estate located in Switzerland are subject to a separate capital gains tax on a cantonal and communal level. In order to avoid speculation, the tax is increased for short holding periods. On the other hand, the applicable tax rate is reduced under 50 per cent if the taxpayer held his or her property for 20 years or longer.

If a taxpayer is frequently trading securities or buying and selling real estate, capital gains realised may qualify as income from self-employment. These gains would then be subject to the ordinary income tax rates, in addition to social security contributions.

2. What are the taxes and rates of tax to which an individual is subject in respect of income and capital gains and, in relation to those taxes, when does the tax year start and end, and when must tax returns be submitted and tax paid?

An individual is subject to income tax on a federal, a cantonal and a communal level. While the tax rates are the same on a federal level, they vary substantially between cantons, and even within a canton, between communities. The income tax rates are progressive and, particularly for average salaries, modest by international standards. The top rates are comparable with rates of other jurisdictions, but they are applicable on comparatively much higher taxable income.

As an example, tax rates for a taxable income of 100,000 Swiss francs, of a family with two children, vary from 1.32 per cent to 11.63 per cent, and for a taxable income of 250,000 Swiss francs, between 10.35 per cent and 26.33 per cent.

The same income tax rates apply to all types of income. Thus, for federal as well as cantonal and communal taxes, all taxable income such as employment income, investment income (except capital gains), rental income, pensions, and alimony payments, are added up in order to determine and apply the respective applicable tax rate.

Some income from foreign sources is exempt from taxation (typically rental income from property abroad or some employment income), if an applicable double taxation agreement exists between Switzerland and the relevant country.

On the federal level as well as in most cantons (except Zurich, Basel Stadt, Appenzell Ausserrhoden and Schaffhausen), foreign individuals taking up residence in Switzerland for the first time, or after an absence of more than 10 years, may opt for what is known as a 'lump sum taxation', provided they have no gainful activity in Switzerland. Under this regime, the taxable income is predetermined based on the worldwide cost of living. In most cantons, the minimum taxable income is, however, fixed at 400,000 Swiss francs or higher.

The tax year starts on January 1 or on the date a taxpayer becomes resident in Switzerland. The tax year

ends on December 31 or on the date the taxpayer is leaving Switzerland for good. There is no day counting for determining whether a taxpayer is subject to unlimited taxation upon taking up residence in Switzerland. If it is the taxpayer's intent to taking up residence, the unlimited taxation starts.

A taxpayer has to submit his or her tax return until March of the following year, however, extensions are granted up to September or November of the following year. The tax authorities send out provisional invoices based on previous year's income factors. If the finally assessed income tax is lower than the provisional payments, the overpaid amount will be credited against any open tax liability or refunded to the taxpayer. In case the taxpayer underpaid, the amount due plus late payment interest must be paid upon the final assessment by the tax authorities.

3. Are withholding taxes relevant to individuals and, if so, how, in what circumstances and at what rates do they apply?

Withholding taxes on salaries are only applied to foreign nationals holding a B-permit. As soon as the individual receives a C-permit, the withholding tax is no longer applicable. Although withholding tax is applied to the salary, the individual must file an annual tax return if his gross salary exceeds CHF 120'000 per annum. In case his or her salary is less but he or she has other sources of income (e.g. financial or rental income), the individual also must file an annual tax return. The tax rates of the so-called tax at source a progressive and depend on whether the taxpayer is married and on the number of children.

Dividends from a Swiss company are subject 35% withholding taxes. When filing the annual tax return, the taxpayer is claiming a refund of such withholding tax when declaring the dividends. The withholding tax will automatically be credited against any income and wealth tax liability.

4. How does the jurisdiction approach the elimination of double taxation for individuals who would otherwise be taxed in the jurisdiction and in another jurisdiction?

Switzerland supports international efforts to achieve greater transparency and a level playing field with regard to the taxation of multinationals. As a member of the OECD, it actively participates in the base erosion and profit shifting (BEPS) project and follow-up work.

The BEPS Action Plan contains 15 Actions. There is an obligation to implement (minimum standards) with regard to combating harmful tax practices and the spontaneous exchange of information on advance tax rulings (Action 5), the inclusion of abuse clauses in double taxation agreements (Action 6), country-by-country reporting (Action 13) and the dispute resolution mechanisms (Action 14). Switzerland is implementing these minimum standards.

BEPS Action 5 – Counter harmful tax practices

- *The Federal Act on Tax Reform and AHV Financing (TRAF), which entered into force on 1 January 2020, abolished tax regimes that were no longer internationally recognised and introduced new, internationally accepted rules.*
- *The spontaneous exchange of information on advance tax rulings has been in force in Switzerland since 1 January 2018.*

BEPS Action 6 – Prevent treaty abuse

- *The provisions to prevent treaty abuse and to improve the resolution of disputes (see BEPS Action 14 below) will be introduced either via the multilateral agreement or in the context of the negotiation of double taxation agreements (DTAs).*

BEPS Action 13 – Country-by-country reporting

- *The multilateral agreement, the law and the ordinance on the exchange of county-by-country reports entered into force in December 2017. In Switzerland, the submission of country-by-country reports has been mandatory since the 2018 tax year. The first regular exchange took place in 2020.*

BEPS Action 14 – Improving effectiveness of dispute resolution mechanisms

Switzerland has undertaken to meet the 17 elements of the minimum standard aimed at improving the effectiveness of dispute resolution mechanisms. The minimum standard pursues three aims: 1) ensuring that the mutual agreement procedure obligations under double taxation agreements (DTAs) are carried out in good faith and that disputes leading to a mutual agreement procedure are resolved in a timely manner; 2) ensuring that administrative processes to prevent and resolve DTA disputes in a timely manner are effectively implemented; and 3) ensuring that taxpayers are able to

use the mutual agreement procedure when they are entitled to do so. Switzerland largely meets the elements of the Action 14 minimum standard and plans to make the necessary changes.

5. Is there a wealth tax and, if so, which factors bring an individual within the scope of that tax, at what rate or rates is it charged, and when must tax returns be submitted and tax paid?

Unlike most other jurisdictions, Switzerland applies a net wealth tax on an individual's worldwide assets net of any debts, including mortgages, loans and private borrowings. Wealth tax is only levied at the cantonal and communal levels.

The applicable tax rates are progressive and vary again from canton to canton, and within cantons, between communities. The range is between 0.1 per cent and 1 per cent of the taxable net assets.

Taxable assets include the fair market value of bankable assets, the tax value of real estate, gold, cars, airplanes, boats, horses, art or jewellery collections (in some cantons even one piece of art if the value exceeds a certain threshold) and life insurance.

The wealth tax is levied at the same time as the income tax; thus the taxpayer has to declare the value of his assets as of December 31 or the last day of his residence.

6. Is tax charged on death or on gifts by individuals and, if so, which factors cause the tax to apply, when must a tax return be submitted, and at what rate, by whom and when must the tax be paid?

Inheritance and gift tax are levied on a cantonal level only. The cantons of Schwyz and Obwalden are the only cantons not levying any inheritance tax.

Gifts made by a resident in Switzerland are typically subject to gift tax in the canton of his or her residence.

It is important to note that the donee is the taxpayer, not the donor. The latter is jointly liable to the gift tax. If the donor bears the gift tax, this qualifies as another gift to the donee, meaning that gift tax would be applicable again on that.

The tax-free amounts are typically low, and the tax rates are progressive, reflecting the relationship between the donor and the recipient. Various gifts over the years are added up, and the possibly higher tax rate is applied to the entire gift. The rates vary from zero to over 50 per cent.

Inheritance tax is levied in the Canton where the deceased was resident. The heirs and legatees are the taxpayers and must file a tax return. The tax rates are the same as the gift tax rates, reflecting the relation between the deceased and his or her heirs. The rates vary from zero to over 50 per cent.

Gifts or inheritances a taxpayer receives from a donor or a deceased abroad are not subject to inheritance or gift tax.

7. Are tax reliefs available on gifts (either during the donor's lifetime or on death) to a spouse, civil partner, or to any other relation, or of particular kinds of assets (eg business or agricultural assets), and how do any such reliefs apply?

The tax-free amounts are typically low, and the tax rates are progressive, reflecting the relationship between the donor and the recipient. Various gifts over the years are added up, and the possibly higher tax rate is applied to the entire gift. The rates vary from zero to over 50 per cent.

While gifts and inheritances to spouses and to civil partners are exempt from gift tax in all cantons, gifts to descendants are exempt in most of the cantons, except Vaud, Neuchâtel and Appenzell Innerrhoden.

The canton of Geneva has a special rule for lump sum taxpayers: gifts from a lump sum taxpayer in Geneva are never tax-free, even if the donees are the descendants, the spouse or the civil partner of the donor.

8. Do the tax laws encourage gifts (either during the donor's lifetime or on death) to a charity, public foundation or similar entity, and how do the relevant tax rules apply?

Swiss resident charities are typically exempt from profits and wealth tax, on the federal level, as well as on the cantonal and communal levels. Certain criteria must be met in order to receive an exemption status. Charities must pursue public or charitable purposes that are in the interests of Switzerland. Profits must be exclusively and irrevocably devoted to these particular interests. Charities can have activities in Switzerland or abroad.

However, some cantons only grant an exemption from taxation if the activity is limited to certain third world countries.

Donations of individuals and entities to tax-exempt charities in Switzerland are, in general, deductible for income tax purposes up to 20 per cent of the taxable income of a taxpayer.

Donations to charities outside Switzerland are typically not deductible.

9. How is real property situated in the jurisdiction taxed, in particular where it is owned by an individual who has no connection with the jurisdiction other than ownership of property there?

Property situated in Switzerland may lead to a limited tax liability in Switzerland if the taxpayer is resident abroad. Such taxpayer must file an annual tax return declaring all worldwide income and assets. If the taxpayer is married, all income and assets of the spouse must be declared as well as there is no married filing separately status. The value of the worldwide assets is only taken into account when determining the applicable tax rate. All assets except the value of the Swiss real estate are exempt from taxation (exemption under progression). If there is no significant mortgage on the Swiss real estate the taxpayer may choose to simply declare the tax value and to have the highest tax rate applied.

The community where the property is located is determining the tax value of the property as well as the notional rental value. In case the property is not rented out but used by the taxpayer, he or she must declare this notional rental value as income and may deduct maintenance cost. The income tax is levied on such net income amount.

10. Does your jurisdiction have any specific rules in relation to the taxation of digital assets?

The mere holding of payment tokens acquired via crypto exchanges in the form of pure digital means of payment generally does not generate income or earnings that are subject to income tax and withholding tax.

In principle, profits from trading cryptocurrencies in private assets are treated as tax-free capital gains in Switzerland. Accordingly, capital losses incurred from crypto trading are also not tax-deductible.

When mining payment tokens (known as the proof of work method), means of payment are created in the broadest sense. The work involved in mining is usually compensated with payment tokens. Such tokens are therefore not acquired via a crypto exchange but represent compensation for mining. This compensation is taxable income. If the general criteria for self-employment are met, such compensation is considered income from self-employment for tax purposes.

New tokens can also be created during staking (proof of stake method). The validators who provide their tokens receive compensation for this process. In practice, validators often take the form of staking pools. For the tokens made available to the validators, the individual investors receive compensation from the staking pool. This compensation generally qualifies as income from movable assets. If the staking is not carried out via a staking pool, it must be checked whether the natural person acting as validator is self-employed.

Costs directly related to the generation of income and necessary in the context of the management of the assets can be deducted from the income of movable assets. Not deductible are costs that are directly related to the acquisition, reallocation or sale of the assets are not deductible.

Payment tokens in the form of digital means of payment are a measurable, movable tradable assets that must be declared as movable capital assets in the annual tax return at market value. If no current valuation rate can be determined, the payment token must be valued at the original purchase price, converted into Swiss francs.

11. Are taxes other than those described above imposed on individuals and, if so, how do they apply?

On the federal level, value added tax (VAT) is levied. The standard rate is 7.7 per cent. However, tax on food and drinks (excluding alcohol), medication and printed products, is subject to a lower tax of 2.5 per cent. Hotel services are subject to 3.7 per cent VAT.

12. Is there an advantageous tax regime for individuals who have recently arrived in or are only partially connected with the jurisdiction?

On the federal level as well as in most cantons (except Zurich, Basel Stadt, Appenzell Ausserrhoden and Schaffhausen), foreign individuals taking up residence in Switzerland for the first time, or after an absence of

more than 10 years, may opt for what is known as a 'lump sum taxation', provided they have no gainful activity in Switzerland. Under this regime, the taxable income is predetermined based on the worldwide cost of living. In most cantons, the minimum taxable income is, however, fixed at 400,000 Swiss francs or higher.

The lump-sum taxation must be applied for. Thus, the taxpayer should consider before he or she is moving to Switzerland, whether a lump-sum tax regime could be favourable or if certain changes to his or her current structure are needed before taking up residence in Switzerland.

13. What steps might an individual be advised to consider before establishing residence in (or becoming otherwise connected for tax purposes with) the jurisdiction?

A individual should contact a Swiss tax advisor before moving to Switzerland, in particular if he or she holds shares of foreign (Offshore) companies or is a settlor or beneficiary of a trust or foundation. If small amendments can change that tax consequences in Switzerland, these revisions should be made while the individual is still abroad.

The timing of taking up residence can be of an issue as Switzerland is not applying a day counting method to determine whether an individual is subject to limited taxation or not.

14. What are the main rules of succession, and what are the scope and effect of any rules of forced heirship?

According to Swiss law, upon death of an individual the heirs acquire the worldwide estate in its entirety, by operation of law. The estate consists of all moveable and immoveable assets owned by the deceased at the time of his or her death, as well as limited rights in rem or claims. In order to determine the net estate value to be divided among all the beneficiaries, liabilities such as outstanding debts, funeral expenses, administrative costs and taxes are deducted from the gross estate value.

The deceased is free to dispose of his or her estate up to the free quota only. Legal heirs closely related to the testator, such as descendants, parents, spouses or registered partners, are entitled to receive a compulsory share of the estate. On January 1, 2023 the amendments to the forced heirship rights have come into effect. The new mandatory portions are as follows:

- *for a descendant of the deceased: one-half of his or her statutory portion;*
- *for each parent of the deceased: statutory portion abolished; and*
- *for the surviving spouse or the registered partner of the deceased: one-half of his or her statutory portion (no change).*

Under certain conditions, each protected heir may bring a claim that his or her compulsory portion is not satisfied due to testamentary dispositions or dispositions made by the deceased inter vivos.

Heirs protected by forced heirship rights can waive their rights by entering into a succession pact with the testator. There are formal requirements for a succession pact.

15. Is there a special regime for matrimonial property or the property of a civil partnership, and how does that regime affect succession?

If the deceased was married, the dissolution of the property regime needs to be taken care of in order to determine the estate of the deceased. According to Swiss law, the ordinary marital property regime is the sharing of acquired property regime. Under the ordinary regime a spouse's property consists of two baskets (i) the acquisitions, which mainly comprises a spouse's proceeds from his or her employment and (ii) the individual property, which mainly contains assets belonging to a spouse at the beginning of the marriage plus gifts and inheritances during the marriage. Upon death of one spouse, his or her estate is determined by dissolving the marital property. The individual property is part of the estate as well as 50% of the deceased's acquisition basket plus 50% of the acquisition basket of the surviving spouse.

By way of marriage contract by public deed, the spouses can also agree on a different regime, such as the separation of assets or the joint property regime. In case of separation of assets all assets in the name of the deceased spouse form part of his/her estate. Under joint property regime only half of the whole property forms part of the estate of the deceased. The other half belongs to the surviving spouse.

16. What factors cause the succession law of the jurisdiction to apply on the death of

an individual?

Swiss inheritance law applies if the deceased had his last residence in Switzerland. Nationality is not decisive. However, a foreign national may explicitly choose the law of his nationality to apply to his or her estate, provided the testator has not Swiss citizenship. Such explicit choice is made in a last will or an inheritance contract.

Other connecting factors are the subsidiary jurisdiction of Swiss courts for Swiss citizens living abroad, if the foreign competent authority does not deal with the (Swiss) estate. For the broad meaning of each relevant factor for the applicable law please see below (question 15).

17. How does the jurisdiction deal with conflict between its succession laws and those of another jurisdiction with which the deceased was connected or in which the deceased owned property?

The governing law regarding the distribution of an individual's estate is determined by applying the Swiss Federal Act on International Private Law. This act provides that the estate of a person with last residence in Switzerland is subject to substantive Swiss succession law.

This principal can be breached if a foreign international private law foresees the exclusive jurisdiction for real estate located in its territory. In this case the applicable law is provided in the according international laws of the states where real property is located, which is usually the law of situs (lex rei sitae). In addition to that, a foreign national residing in Switzerland may, by last will or inheritance contract, subject his or her estate to his or her national law. Such disposition shall become void if, at the time of death, the individual is no longer a national of that country or has become a Swiss national. In this case Swiss law is applicable in any case.

The estate of a person with last domicile abroad is subject to the law to which the provisions of the applicable conflict law of that country refer to (so called Swiss "Renvoie").

The mentioned provisions apply irrespective of whether the estate consists of moveable or immoveable property or whether it consists of an asset which is co-owned or jointly owned. Co-ownership occurs if several persons own a share of an object that is physically undivided. To the contrary, joint ownership is the consequence of a pre-existing statutory or contractual relationship, such as a simple partnership or a community of heirs and is exercised collectively.

18. In what circumstances should an individual make a Will, what are the consequences of dying without having made a Will, and what are the formal requirements for making a Will?

In the case of intestacy, Swiss law provides that the closest relatives (descendants, parents and grandparents) and the surviving spouse or registered partner are statutory heirs. The closest statutory heirs are the deceased's descendants. They inherit in equal parts. Predeceased children are replaced by their descendants in all degrees per stirpes.

If the deceased leaves no issue, the estate passes to the parental line. Each parent inherits one-half of the estate. Predeceased parents are replaced by their issue in all degrees per stirpes. Where there is no issue on one side, the entire estate passes to the heirs on the other side.

If there are neither descendants nor heirs in the parental line, the estate passes to the line of the grandparents.

Surviving spouses and registered partners are entitled to one-half of the estate if they must share the estate with the deceased's issue. If there are no descendants, the surviving spouse or registered partner inherits three-quarters of the estate, whereas the deceased's parents inherit one-quarter. If the deceased neither leaves descendants nor parents, the surviving spouse or registered partner inherits the entire estate.

Where the deceased leaves no statutory heirs at all, the estate passes to the state authority of the canton or community of the decedent's last residence.

Anyone who has the capacity to make rational judgements and is of age (18 years) an, within the limits prescribed by law, execute a will. The testator may establish his or her will in the form of a public deed, or in holographic form or, in extraordinary circumstances, in oral form. A will by public deed is drawn up in the presence of two witnesses by a public official, notary public or other person authorised under cantonal law. A will in holographic form must be written by the decedent by hand, from beginning to end, and must be signed. Furthermore, the holographic will must include an indication of the day, the month and the year of its execution. A last will may be drawn up in oral form if the deceased person was not able to use the form of public

deed or holographic form due to exceptional circumstances, such as imminent death, a car or aeroplane accident, an epidemic or war. For that purpose, the testator must declare his or her last will to two witnesses. Therefore, the witnesses must write down the last will and notify the court.

If the testator wants to deviate from the legal inheritance, he has to execute a last will. Legal heirs closely related to the testator, such as descendants, parents, spouses, or registered partners, are entitled to receive their compulsory portion (for exact quotes see number 12). The deceased is therefore limited to dispose of his or her estate in a last will.

A will should also be made if a foreigner domiciled in Switzerland wants the law of his citizenship to be applicable with regards to his estate (see question 15).

If an individual's only connection to Switzerland is Swiss real property, the need of a will depends on the conflict law rules of the state governing the estate. A last will dealing with the Swiss real property only may be beneficial.

19. How is the estate of a deceased individual administered and who is responsible for collecting in assets, paying debts, and distributing to beneficiaries?

In general, unless the deceased appointed an executor in his or her will or an official administrator or a common representative has been appointed by the competent authority, the heirs themselves administer the estate of the deceased. Such administration requires always anonymous decisions.

Based on the principle of universality of succession, upon the death of an individual, the heirs become the legal owners of the deceased's estate in its entirety. All assets and liabilities automatically pass to the heirs directly and immediately on the day of death. Where there are several heirs, they form what is known as a community of heirs until the estate is wholly divided among them. Consequently, a joint ownership is formed, which means that all heirs are collectively entitled to the entire estate. However, any dispositions over the estate require unanimous approval of all heirs. In addition, the estate is jointly administered by the heirs if neither an executor, nor an administrator, nor a common representative has been appointed.

No heir has the duty to remain in the community of heirs and may request the division of the estate at any time. If the heirs cannot agree on the division of the estate, an action for partition must be filed with the competent court.

The heirs can freely agree on the method of division, unless ordered differently by the testator. If the latter made no provisions, the heirs form as many portions or lots as there are heirs or stirpes. The aim of the estate division is to liquidate the community of heirs and to distribute the assets to the individual heirs.

As a part of the partition procedure, the statutory heirs are mutually obliged to place into hotchpot any assets, gifts or grants received from the deceased during his or her lifetime, unless the deceased expressly disposed otherwise.

20. Do the laws of your jurisdiction allow individuals to create trusts, private foundations, family companies, family partnerships or similar structures to hold, administer and regulate succession to private family wealth and, if so, which structures are most commonly or advantageously used?

The Family Foundation is used hesitantly in Swiss succession planning, although in recent years, the establishment of a foundation has been increasingly evaluated again. In addition to the limits the Swiss Civil Code poses on Family Foundation, other legal restrictions are also responsible for the fact that Family Foundations are hardly ever used by a Swiss testator.

The compulsory portions of the spouses and children, and in some cases even of the parents, as stipulated in the Swiss Civil Code, restrict the testator's freedom of disposal (so-called forced heirship rules). An heir being protected by the compulsory portion is entitled to unlimited ownership of inherited assets. Even if the protected heir was the sole beneficiary of a foundation or a trust and the deed provided that the assets will be distributed at a fixed date, the compulsory portion would be violated and could in principle be clawed-back in a Court procedure.

If the testator transferred part of the assets to a foundation during his or her lifetime, irrespective of whether it is a Swiss or foreign foundation, this donation is subject to a reduction under inheritance law if it was made five years preceding his or her death (Art. 527 number 3 Civil Code). If the donation was made more than five years previously and the heirs can prove that the donation was made for the purpose of avoiding the restriction on disposal, they can still claim that their compulsory portion was violated (Art. 527 number 4 Civil

Code). In practice, such proof is not in any case easy, but the Federal Supreme Court does not set high hurdles for descendants. In these cases, the foundation must return the assets to the respective heir in the amount of the compulsory portion, if it still exists.

Also, family partnerships are not commonly used.

Family companies however are used more often to pass on family businesses. Shareholders agreements are typically signed providing exit and succession rules. In cases family members have no children of their own, a transfer to brothers/sisters or nieces/nephews is often mandatory to keep the business within the family. This may lead to inheritance taxes that have to be considered during the estate planning.

21. How are these structures constituted and what are the main rules that govern them?

A family foundation is rarely constituted due to the very limited purpose possible as set out in the law. A family foundation must be registered in the Commercial Register. There are no other disclosure requirements. Some families look into establishing a Liechtenstein family foundation instead. There are not registration requirements in Switzerland for Liechtenstein foundations.

Swiss law does not provide for a trust yet. A special expert group had been examining whether a Swiss trust (or at least a similar structure) can be implemented into the Swiss legal system.

For family companies, the normal rules for corporations are applicable.

22. What are the registration requirements for these structures and what information needs to be made available to the relevant authorities? To what extent is that information publicly available?

Except from the registration of Swiss companies and Swiss family foundation in the commercial register, there is no other obligation to make information available to the public. There is no public register on the ultimate beneficial owner or the controlling person.

23. How are such structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?

A Swiss family foundation is subject to profits and wealth tax. Distributions to beneficiaries are deductible provided they are within the scope of the foundation. In case the tax authorities consider a distribution as not covered by the purpose, they add the distribution back to the profits. The asset tax is typically levied on the fair market value of the assets as of December 31.

Neither the founder nor a director is subject to income and asset tax. When establishing a Swiss family foundation, the transfer is subject to gift or inheritance tax in most cantons. Some cantons exempt such transfers from gift and inheritance tax in case all beneficiaries would be exempt themselves, i.e. spouses or issue.

Beneficiaries are subject to income tax on any distribution received from a foundation. It does not matter whether the Family foundation distributes income, capital gains or corpus. As a result, corpus cannot be distributed tax free. A distribution is not considered a gift. It is in any event income.

24. Are foreign trusts, private foundations, etc recognised?

The Hague Convention on the law applicable to trusts and their recognition came into force in Switzerland on the 1st of July 2007. Accordingly, foreign trust are recognised for civil law purposes provided they have been validly settled according the applicable trust law.

The tax treatment of trusts is still determined exclusively under Swiss tax law. Art. 90 of the Hague Convention expressly states that the Convention does not affect the competence of states in fiscal matters. As a result, the ratification of the Hague Convention had no effect on the tax treatment of trusts.

Trustees of a foreign trust are treated as the owners of the trust assets. However, the funds are not considered their own assets but constitute property separate from their own property. If the trustee opens a bank account at a Swiss bank, the account statement would show the name of the trustee followed by "trustee of the XYZ Trust". The same applies to Swiss real estate held by a trustee. In the land register the trustees name is followed by the "trustee of the XYZ Trust".

Foreign private Foundations are typically recognised for Swiss civil law purposes, provided the founder has not retained substantial rights to influence the board of the foundation or the assets directly. For tax purposes, foreign foundations are often not recognised, i.e. treated

like a flow-through entity (compare question 23).

25. How are such foreign structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?

Trustees and members of the board of foundations are not subject to tax for the funds held in trust. Provided a trust or foundation is respected for tax purposes, no income tax or wealth tax will be due on the funds. Only distributions to a beneficiary resident in Switzerland will be subject to income tax. A distribution is typically not a tax-free gift. The Swiss Supreme Court ruled that a foundation cannot make any gift as the board has no animus donandi. The board simply follows the purpose as determined in the statutes. The same rule applies to trusts.

The taxation of trusts in Switzerland depends on whether the trust is a revocable or an irrevocable discretionary or fixed interest trust. Depending on its nature, the trust assets and the respective income can be attributed for tax purposes to the beneficiary or the settlor in certain cases:

- *a revocable trust is transparent for tax purposes; thus, the assets and income are attributed to the settlor for income and wealth tax purposes;*
- *the Swiss resident beneficiary of a fixed interest trust has to include the distribution as well as the capital value of his claim in his personal tax return;*
- *a Swiss resident settlor, taxed under the ordinary regime, is considered not to have disposed of his or her assets when settling an irrevocable discretionary trust. The assets as well as the income thereof will remain taxable in his or her hands; and*
- *a foreign resident settlor settling an irrevocable discretionary trust is only considered to have disposed of his or her assets if he is not a beneficiary himself or herself, and has not retained any powers, such as power to amend the trust documents, or power to add or remove beneficiaries, trustees or protectors.*

26. To what extent can trusts, private foundations, etc be used to shelter assets from the creditors of a settlor or beneficiary of the structure?

Trusts and private foundations may shelter the assets from creditors if they are irrevocable and the settlor has not retained substantial influence on the trustee or the assets. The more influence the settlor has the more likely it is that the trust or the private foundation could be ignored.

A careful drafting of the deed is hence very important.

27. What provision can be made to hold and manage assets for minor children and grandchildren?

Assets from an estate belonging to minor children and grandchildren are administered by their legal representatives, namely by their (surviving) parent. If both parents passed away, legally appointed guardians who will administer the children's funds will be called into duty by the children's protection authority (KESB). The guardian can be close relative mentioned in a last will or an officially appointed person.

Due to the rigid forced heirship provisions, assets can typically not be held for minor children or grandchildren in a trust or foundation without violating their compulsory portions. In case of minors KESB would need to take any action to protect the children's rights, provided it is in the child's best interest.

In last wills it is typically foreseen, who shall manage the funds until the child turns 18.

28. Are individuals advised to create documents or take other steps in view of their possible mental incapacity and, if so, what are the main features of the advisable arrangements?

Everyone has the option of setting forth binding instructions in advance by issuing a Living Will and/or an Advanced Care Directive.

A Living Will enables any individual who is of sound mind to make binding provisions regarding medical measures if he/she is no longer capable of expressing his/her wishes. It must be issued in writing, dated and signed. However, it does not have to be handwritten or notarised. As there is no official public register for Living Wills om Switzerland, it is advisable to give copies of the Living Will to one's general practitioner and to close relatives or to one's representative.

In an Advanced Care Directive an individual can appoint a natural person or a legal entity to represent him/her in case he/she becomes incapacitated. It is also possible to appoint several representatives to represent the principal about different matters (personal care, financial affairs, legal matters etc.). Personal care generally relates to matters of everyday living, such as administrative tasks, dealing with mail and taking decisions about the principal's residential situation. Financial affairs relate to filing the principals tax return, manage his/her assets and take care of financial matters in general. An Advanced Care Directive must either be handwritten (from beginning to the end), dated and signed, or executed by way of a public deed (notarisation in front of a Swiss civil public notary). The principal may revoke the document at any time as long as he/she is still capable of judgement.

29. What forms of charitable trust, charitable company, or philanthropic foundation are commonly established by individuals, and how is this done?

In Switzerland foundations are typically used for charitable purposes. Less common are associations.

To create a foundation, the founder must submit notarized legal documents. For this purpose, the foundation articles must be drafted containing

- *the name of the foundation;*
- *the funds or property attributed;*
- *the special objective of the foundation;*
- *the designated board of the foundation.*

As a legal entity, a Swiss foundation must conform to a relatively strict definition. Once the special objective has been set out in the charter, it cannot be changed without the approval of the supervisory authority. Thus, the special objective is typically quite broad to enable the foundation to be active in a broad sense. According to the Federal Supervisory Board for Foundations, the minimum amount of initial capital required to start a foundation is CHF 50'000.

The Board Foundation is required to submit an annual report of its activities along with a financial annual statement approved by auditors to the Supervisory Authority. A charitable Foundation is subject to the supervision by either a cantonal or federal Supervisory Authority. Charitable foundations having worldwide activities are typically under supervision by the Federal Department of Home Affairs in Berne. The Supervisory Authority must ensure that the assets of the Foundation are used in accordance with its objective.

Swiss foundations that pursue public or charitable purposes are exempt from profit as well as capital tax provided such profits are exclusively and irrevocably dedicated to such purposes. To profit from a tax exemption the charitable purpose must meet two main conditions as determined by case law of the Federal Supreme Court: The purpose is in the general interest of Switzerland and it is altruistic.

The general interest is not limited to activities in Switzerland. A Swiss foundation with a worldwide activity can also be exempted from tax liability. However, activities carried out abroad must typically be carried out in unindustrialised countries, not within the EU or USA etc., and must be sufficiently documented in order to prove that these activities meet the special objective of the Foundation (activity reports, annual accounts etc.).

The Following activities are considered as charitable: activities in charitable, humanitarian, health-promoting, ecological, educational, scientific and cultural areas as well as social welfare, arts and sciences, education, promotion of human rights, protection of the homeland, nature and animals, and development aid. The circle of beneficiaries of the foundation must be open, i.e. it cannot be limited to a certain group of people only.

Altruism means promoting the interest of third parties to the complete absence of the personal interests of those involved and requires sacrifices to be made for the public good.

A request for a tax exemption must be submitted in writing to the cantonal tax administration at the registered seat. The Foundation must demonstrate that the conditions for tax exemption are met. Such request needs to include the drafts of the charter and further documentation.

30. What is the jurisdiction's approach to information sharing with other jurisdictions?

Switzerland applies the rules of the common reporting standard. If a beneficiary of a discretionary family foundation is resident in another jurisdiction, only distributions to such beneficiary are reported. If the founder is resident in abroad, he will be reported under the automatic exchange of information. However, these are exceptional cases as Swiss family foundations are not widely used yet, and in particular not by foreign residents.

In case a foreigner is a controlling person of a Swiss Holding Company, this person would be reported under

the Automatic Exchange of information.

31. What important legislative changes do you anticipate so far as they affect your advice to private clients?

As also mentioned in question 20, Switzerland is currently reviewing the introduction of Swiss trust law. The government had launched a consultation in 2022 to introduce legislation on trusts. The statements from the trust industry have been very clear that the proposed amendment of the tax code, i.e. the codification of the taxation of a trust, is disadvantageous and therefore not supported.

Whether or not a trust will be introduced in Switzerland is currently not clear and it will take a couple of years until such legislation could enter into force.

It is unlikely however, that such trust would commonly be used for estate planning for Swiss residents as forced heirship claims and tax consequences limit the use substantially.

Contributors

Dr. Natalie Peter
Partner

n.peter@blumgrob.ch