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Switzerland is an attractive place to live and holiday in: it offers great political stability, tax advantages, and a very high quality of life.

There are a number of reasons a person might want to buy property in Switzerland. A person domiciled abroad may want to relocate their main residence to Switzerland. Alternatively, they might want to purchase a property in Switzerland as a holiday home. They might also be interested in acquiring real estate for the purpose of establishing their permanent business in Switzerland. The impact will be very different from a legal viewpoint, as the Law on Acquisition of real estate by persons domiciled abroad (otherwise referred to as "Lex Koller") clearly distinguishes between categories of real estate and categories of purchasers. It is worth stressing that the acquisition of a real estate assets in Switzerland has to be formalised in a deed, and must be concluded in front of a public notary in order to be valid.

A brief summary of taxes triggered by the purchase, during holding and upon the sale of real estate property will be set out, as well as introductory remarks pertaining to the lump sum taxation.

1) Purchasers who have or want to relocate their domicile² in Switzerland

A) European / EFTA citizens

The agreement dated June 21, 1999 between Switzerland and the European Community and its Member States on the free movement of persons has allowed all citizens of the European Community³ or EFTA⁴ States, who are domiciled in Switzerland are no longer subject to the Lex Koller and now enjoy the same rights as Swiss citizens with regards to purchasing real estate ("national treatment").

These European/EFTA citizens may now freely purchase property in Switzerland, not only if it is their main residence - without any limit on the surface area of the plot – this includes second homes. They also have the right to invest their money in undeveloped plots of land, in commercial buildings or mixed buildings, even if it is only for investment purposes. They are not under any obligation to resell their property when they leave Switzerland.

This relaxing of the law impacts all European citizens who have their legal and effective domicile in Switzerland, as holders of a valid residence or establishment permit (generally B or C permits), be they employees, self-employed, students or retirees. The holders of a short-term residence permit (generally L permits) will, as a rule, not be entered directly in the Land Register but will be referred to the

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² To be domiciled in Switzerland means (i) having a B/C permit and (ii) demonstrating that the centre of one's life is in Switzerland. The purchaser must demonstrate that he/she has left his/her previous country of residence and that he/she will pay taxes in Switzerland. As additional evidence, one can show the payments for registration of a car, insurances, electricity bills, school for the children etc.

³ only the countries which have signed bilateral agreements with Switzerland) Member states of the European Community are : Germany, Austria, Belgium, Denmark, Spain, Finland, France, United Kingdom, Greece, Ireland, Italy, Luxemburg, Netherlands, Portugal and Sweden. Cyprus and Malta also benefit from the same conditions.

⁴ I.e. Norway, Iceland and Liechtenstein.

authorizing authority to obtain a decision stating that they are not subject to the Lex Koller, if they are able to show evidence that they have actually established their domicile in our country.

Those working for institutional beneficiaries, such as intergovernmental organizations, international institutions, diplomatic missions, consulates, etc., are protected under the Federal Act on privileges, immunities, exemptions and financial contributions granted by Switzerland as host state. Those working for institutional beneficiaries will have a legitimation card from the Federal Department of Foreign Affairs and are not subject to the Lex Koller if their effective domicile is in Switzerland, or if they are from an EFTA or CE country, or, for citizens of other countries, if they can establish that they have resided in Switzerland for the period which would have been necessary to obtain a C permit (5 years if they are from the United States, Andorra, Monaco, Saint-Marino and Vatican, and 10 years for other countries).

This also applies to those European citizens' families, regardless of their nationality, who have the right to settle with them. This concerns the spouses and children who are aged below 21 years of age or are dependent, as well as dependent parents or dependent parents of the spouse.

B) Non European citizens

More stringent restrictions continue to apply to non European citizens. They are allowed to purchase residential buildings, but only as a main residence and provided the plot does not exceed a maximum of 3,000 to 3,500 sqm. The inhabitable floor surface area is not subject to any limit (within of course the provision of local building laws). If the plot of land to be purchased is greater than 3,500 sqm of plot, the acquisition is systematically referred back to the first instance authority, which means that the acquisition is not automatically authorised.

2) Purchasers who want to buy a holiday home

Foreigners may acquire a holiday home or a serviced flat. The dwelling must be in a place designated by the cantonal authorities as a holiday resort. Moreover, every authorization must be deducted from the annual quota assigned to the cantons by the Confederation for holiday homes and serviced flats, except where the vendor has already received an authorization in the past for the acquisition of this dwelling or flat.

The maximum number of annual permits set for the whole country is 1,500⁵. The Swiss government sets the cantons' quotas by taking into account their tourism facilities, their tourism development programme and the proportion of land, which is foreign-owned on their territory. For instance, Valais receives 330 yearly units, Vaud 175. The rules relating to distribution of their quotas are drawn up by the cantons themselves (see below).

The cantons and tourist municipalities may make their own restrictions. For instance, they may decide on a total ban on authorizations for a specific location, or permit acquisitions of condominiums only up to a certain quota. Alternatively, they may limit the annual number of authorizations or only permit the purchase of residences that are already foreign-owned. Numerous municipalities in Valais have enacted specific rules in this respect and it is worth taking specific advice.

⁵ The maximum number is 1'500 per year, shared as follows between the cantons: Bern 140, Appenzell Ausserrhoden 20, Lucerne 50, Saint Gall 45, Uri 20, Grisons 290, Schwyz 50, Ticino 195, Obwald 20, Vaud 175, Nidwald 20, Valais 330, Glaris 20, Neuchâtel 35, Fribourg 50, Jura 20, Schaffhausen 20.

Acquisition of holiday apartments or serviced flats in the French speaking part of Switzerland are possible, subject to the above mentioned authorization, in the following cantons: Fribourg, Jura, Neuchâtel, Vaud (e.g. Montreux, Château d'Oex, Villars, Gryon) and Valais (e.g. Verbier, Nendaz, Grimentz). In some cantons, you are prohibited from reselling the asset within a number of years (e.g. five years in Vaud and Valais).

As a general rule, the net floor space and the surface area of the real estate must not exceed 200 m² and 1000 m² respectively.

If the spouse or children under 18 of the person acquiring a holiday home or serviced flat already own such a dwelling or secondary dwelling in Switzerland, authorization may only be granted provided that the latter dwelling is sold before the new purchase transaction is entered in the Land Register.

3) Purchasers who want to buy commercial assets

Real estate, which is used for commercial purposes⁶ can be acquired without authorization. In this case, it is immaterial whether the real estate is used for the purchaser's business or rented/leased by a third party in order to pursue a commercial activity. Such real estate properties may also be purchased solely as an investment.

In exceptional circumstances, living accommodation may be acquired, without prior authorization, as part of a permanent business establishment when it is necessary for the business (e.g. for a caretaker or technician when permanent or almost permanent on-site presence is essential). Living accommodation may also be acquired as part of the purchase of a permanent business establishment if they are required to fulfill residential quotas under planning or zoning regulations. The consistent practice is also that living accommodation may also be acquired as part of such transactions if it is impossible in practical terms and unreasonable to separate this accommodation from the business site⁷. If there is any doubt, an official declaration must be obtained from the appropriate cantonal authorization body to the effect that no prior authorization is required for purchase.

The purchase of reasonable land reserves (approximately one third, and in special cases up to half, of the total surface area) for the expansion in the medium term of an existing or planned business establishment does not require prior authorization either. This means, however, that about two thirds of the surface area must be already built on or should be built on in the near future, i.e. within a one year period, and that about one third can be kept undeveloped and unused as reserve land for a possible extension in the medium term⁸.

4) Persons who work across the borders

Article 7 lit. j Lex Koller makes an exemption for European citizens who have their main domicile abroad (in an EU country) but who work in Switzerland (either as an employee or a self-employed of his/her own firm) returning at least once a week. Those who work across the borders (so-called

⁶ Permanent business establishments, e.g. manufacturing premises, warehouse facilities, offices, shopping centers, retail premises, hotels, restaurants, workshops, doctors' surgeries.

⁷ E.g. house in the middle of a factory site or individual flats in a factory or a multi-storey commercial building, especially when the flat can only be accessed through the commercial premises.

⁸ Useful information in English relating to the Lex Koller can be found in the guidelines of the Federal Office of Justice dated 1st of July 2009 <http://www.ejpd.admin.ch/content/dam/data/wirtschaft/grundstueckerwerb/lex-e.pdf>.

“frontaliers”) are entitled to buy a secondary home near their workplace in Switzerland. This purchase would not be limited in terms of size or type of property.

This has recently led to a landmark federal court case⁹ which provides that the quality of “frontalier” does not depend on having its main residence close to Switzerland. A “frontalier” can be domiciled anywhere in the European Community, for instance in the UK, as long as he/she exercises a professional activity in Switzerland and comes back to his main place of residence at least once a week. Such person has a right to acquire a secondary residence anywhere in Switzerland, as long as it is close to his/ her place of work.

5) Taxes triggered by (i) the acquisition of real estate, (ii) during holding and (iii) at sale, in Switzerland (with figures for Vaud, Geneva, Valais, Bern, Ticino and Grisons)

The Swiss direct tax system is made up of a network of different taxing jurisdictions, the Confederation (federal taxes), the cantons and the municipalities (cantonal and municipality taxes). Although the income taxes are levied at each level, several direct taxes are levied only at the cantonal respectively municipal level.

The tax details below are strictly related to the purchasing, holding and selling of property. If relocating to Switzerland, careful consideration should be paid to the entire tax system (income tax, wealth tax, gift and inheritance tax, etc.).

A) Purchase

The purchase of real estate in Switzerland triggers taxes, at cantonal and municipal levels, and fees, which are generally based on the sale price¹⁰. In the following selected cantons, the scales can be expressed as follows¹¹ :

	Transfer taxes	Land Registry fees	Notary fees
Vaud	3.3% of the sale price (in some municipalities, there is no transfer tax so that the final tax rate comes to 2.2.%)	0.15% of the sale price (but max. CHF 50'000)	0.7 to 0.25% of the sale price (decreasing rate)
Geneva	3.0% of the sale price ¹²	0.25% of the sale price (but max. CHF 40'000)	0.7 to 0.05% of the sale price (decreasing rate)
Valais	From 0.4 to 1.2% (depending on the sale price)	0.2% of the sale price (but max. CHF 3'000)	0.1 to 0.5% of the sale price (decreasing rate)

⁹ ATF 135 II 128.

¹⁰ There are exceptions if the market price or the tax value are higher.

¹¹ The figures and percentages mentioned are valid on 1st of January 2011.

¹² In case of purchase of real estate of i) maximum CHF 1'151'444 ii) used as a main residence during at least 3 years, a tax reduction of CHF 17'269 is granted.

	Transfer taxes	Land Registry fees	Notary public
Ticino	0.3% of the sale price	1.1% of the sale price	0.1 to 0.5% of the sale price (decreasing rate)
Grisons	From 0 to 2% of the sale price (depending on the municipality)	0.1% of the sale price (but max. 15'000)	0.1% of the sale price
Bern	1.8% of the sale price	CHF 200	Min. CHF 715 and max. CHF 30'825

B) Holding

Three kinds of annual taxes apply when holding a property: (i) property tax, (ii) annual wealth tax and (iii) annual income tax.

- (i) For individuals, property tax is an annual tax levied on the real estate property by cantons or municipalities, which is calculated on the tax value of the real estate. In the above mentioned cantons, the rate is between 0.5 and 1.5 ‰ of the fiscal value¹³.
- (ii) The annual wealth tax is computed, at the cantonal and municipal levels, on the fiscal value of the real estate, after deduction, under certain conditions, of debts and social deductions. The rate is progressive and varies widely from canton to canton. For a high level of wealth, the maximum rate is between 0.4 (Grisons) and 1.03% (Geneva)¹⁴.
- (iii) The annual income tax is computed, at the federal, cantonal and municipal levels, on the rents collected or, if the building is used by its owner, on a theoretical rental value. Maintenance expenses and interest paid may, under certain conditions, be deducted from the taxable income. In this respect, please note that the so-called "Dumont-practice", according to which maintenance expenses could only be claimed to a limited degree during the first five years after the purchase, has been abolished. For a Swiss resident, the tax rate (progressive)¹⁵ is determined on the basis of the worldwide net income.

C) Sale

Gains realized by individuals on the sale of Swiss real estate property (private [non business] property) are not subject to income taxes but may be subject to a separate real estate capital gain tax which is levied only at cantonal and municipal level. The property gain represents the difference between the sale price and the investment cost, which includes the costs related to the purchasing or the selling¹⁶ as well as the improvements costs. This tax is owed by the seller.

Tax rates vary widely from canton to canton:

- in Geneva, the rate starts at 50% if the holding period is less than two years, and decreases to 0% after 25 years;
- in Vaud, the rate is regressive from 30% if the real estate is sold during the first year of holding to 7% after 24 years of holding¹⁷;

¹³ In Ticino, property tax is levied only if its amount is above the income and wealth tax.

¹⁴ Personal situation: married couple.

¹⁵ The maximum tax rate is about 45%.

¹⁶ E.g. land transfer tax, notary costs, registrations fees, agent's commissions.

¹⁷ In case of main residence, each year counts for double.

- in Valais, the tax is levied in parts as per the following scale: 12% for gains up to CHF 50'000, 18% for gains from CHF 50'001 to 100'000 and 24% for gains above this. If the holding period has lasted for more than 6 years, the tax is reduced by 4% for each entire year of holding as of the 6th year;
- in Ticino, the rate starts at 31% if the holding period is less than two years, and decreases to 4% after 30 years;
- in Grisons, the average maximum tax rate is 15%; this rate increases if the holding period has lasted for less than 2 years and is reduced if the holding period has lasted for more than 10 years;
- in Bern, the rate is progressive and differs according to municipalities; it starts from 1.85% for gains up to CHF 2'600 and may reach 17.82 % for gains above CHF 316'200¹⁸.

Special relief is often granted where the amount received from the sale of the Swiss immovable property is reinvested in similar investments within a limited time-frame (rollover relief).

6) Lump sum taxation

The Swiss ordinary taxation of private persons is based on worldwide income and wealth. However, the Swiss tax legislation offers foreigners taking up residence in Switzerland an alternative method of taxation to the traditional system of taxation. The lump sum (or taxation according to expenditure, "forfait fiscal") is based on the taxpayer's standard of living. One of its main characteristics is that the taxpayer does not have to declare his/her worldwide income or wealth. This system is only available to taxpayers who are not economically active in Switzerland.

The tax is calculated on the basis of the taxpayer's standard of living and is then levied according to the ordinary scale. Instead of having to declare his/her worldwide income and wealth, it is the annual expenses of the taxpayer (and of his/her dependants) which constitutes the basis (typically: expenses incurred for food and clothing, housing [including heating, cleaning, garden maintenance, employees...], leisure activities, travel, insurances, taxes, mortgage financing etc.). The level of expenses may not be lower than five times the annual rental value of the property (or the rent actually paid).

The lump sum is mutually agreed between the tax administration and the taxpayer. This agreement is generally valid during a limited period of time but can be renewed.

Besides, the amount of tax payable under lump-sum taxation must exceed the income tax, which would be due on certain Swiss tax source income as well as income for which a partial or total reduction of foreign taxes is requested by virtue of a tax treaty (comparative tax liability). This mainly refers to dividend, interest and royalty income received from abroad.

The implementation of certain double-tax treaties to which Switzerland is party may raise the amount of the amount of the lump sum. This would be the case, for instance, for the taxpayers benefiting from the treaty with France : in this case the lump sum amount would be raised by approx. 30%.

As a rule, Swiss lump-sum taxpayers are considered Swiss residents and thus qualify for treaty relief. However, some countries do not recognise the status of Swiss residents if the taxpayers are taxed only on a lump sum basis¹⁹. This is why the appropriateness and details of the lump sum taxation

¹⁸ The tax rates increase if the property has been owned for less than 5 years and decreases after 5 years.

¹⁹ This is the case for Germany, Austria, Belgium, Canada, Italy, Norway and USA. The total income from these states have to be taken into consideration for the calculation of the comparative tax liability.

should be studied and verified for each particular situation. At international level, this system seems to remain very attractive.

After discussions at inter-cantonal tax level, the Federal government has issued a draft of amendment regarding lump-sum taxation rules. As mentioned above, the current minimum lump-sum amount is set at five times the annual rental value of the property. If this draft of amendment is adopted, this figure would be raised to seven times the annual rental value in the future and a minimum of CHF 400'000 for the direct federal tax (the cantons remaining free to adapt this minimum amount for cantonal tax purposes). In this respect, a five year transition period would apply to taxpayers who are subject to lump-sum taxation at the moment of the entry into force of the new rules.

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This memorandum was prepared by Schellenberg Wittmer for :

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