05.

RELOCATING TO SWITZERLAND
IMMIGRATION AND TAX LAW CONSIDERATIONS

[**Philippe Kenel**, Doctor of Law, lawyer in Pully-Lausanne, Geneva and Brussels, Python]
[**Daniel Gatenby**, LL.M. Tax, lawyer in Pully-Lausanne and Geneva, Python]

When a foreign national decides to settle in Switzerland, the two main issues are obtaining a residence or work permit and the question of tax. We will address these two questions below.

Immigration law

Any foreign national wishing to settle in Switzerland must obtain a residence permit or a work permit. By way of introduction, it is important to make two points. First, the applicable rules are fundamentally different depending on whether the applicant is a national of a European state (EU or EFTA) or of a third country. As Switzerland has signed an agreement with the European Union on the free movement of persons, European nationals are entitled to a residence permit or a work permit if they meet a certain number of conditions. However, this is not the case for third-country nationals. As we shall see below, Switzerland has a very restrictive migration policy towards third-country nationals. While Irish nationals still benefit from the Agreement on the Free Movement of Persons because their country has not left the European Union, nationals of Northern Ireland and the other Home Nations of the United Kingdom are considered as third-country nationals since 1 January 2021. People who already resided and were still residing in Switzerland on that date benefit from acquired rights. As a result, foreign nationals wishing to settle in Switzerland must first determine whether they have European nationality. Secondly, it is up to the applicant to decide whether he or she wishes only to live in Switzerland or also to work there. Below we set out the rules applicable to non-European nationals only.

Philippe Kenel, Doctor of Law,
lawyer in Pully-Lausanne, Geneva and Brussels, Python

Residence permit

With the exception of people who wish to stay in Switzerland for a limited period for specific reasons, such as studies or medical treatments, which do not create a domicile in Switzerland, there are only two ways for a non-European national to obtain a residence permit in Switzerland. First, they can obtain a pensioner's permit if they meet the following conditions: 1) they must be over 55 years of age; 2) they must have special personal ties to Switzerland; please note that the Swiss authorities are very strict in their interpretation of this condition. For example, it is not sufficient to own a property in Switzerland; 3) they must no longer engage in any gainful activity, either in Switzerland or abroad, with the exception of managing their own assets; 4) they must move the centre of their interests to Switzerland; 5) they must have sufficient financial resources to live in Switzerland.

If a person does not meet the requirements for a pensioner's permit, they can apply for a residence permit based on "major public interests". Apart from the case of famous artists or sportspersons who can demonstrate that their presence in Switzerland represents a major cultural interest, the only path open to other foreign nationals is to demonstrate that granting them a residence permit represents a major tax interest for the canton in which they wish to settle. As will be mentioned below, in order to do this, they must agree to pay lump sum taxation on a higher basis than the amount provided for by law. The minimum amount depends on the canton in which the applicant wishes to settle.

Work permit

Non-EU citizens do not have a right to live or work in Switzerland. Only management staff, specialists and qualified workers may be admitted to work in Switzerland, subject to the availability of a quota unit. The conditions that have to be met are the following: 1) the admission of the foreign nationals must serve Switzerland's economic interests; 2) the priority of the Swiss and EU/EFTA labour markets must be respected (only when the Swiss and European labour markets have been explored in vain can an application be submitted for a third-country national); 3) the usual minimum working and salary conditions customary in the sector must be respected; 4) the application must be made for a full-time position.

In case of an intergroup transfer, i.e. an international transfer within a multinational group, it is possible for a non-European citizen to obtain a work permit more easily, in that the priority for Swiss and EU/EFTA labour markets does not apply. However, the applicant must have been employed for a company within the multinational group for more than a year prior to transferring to Switzerland. They must also hold a higher management or specialist position.

Depending on the citizenship of the applicant, it may be necessary to apply for a long-term visa to be able to enter Switzerland. In any case, third-country nationals must wait until the work permit is granted to start working.

Tax law

Below, we present the main principles of Swiss taxation, i.e. the ordinary taxation system, the lump sum taxation regime and the rules relating to the taxation of gifts and inheritance.

Ordinary taxation

Direct taxes are levied on three levels in Switzerland: Federal, Cantonal and Municipal. The tax legislation provides for a harmonization of income and wealth tax rules between Cantons and Municipalities, which means that both taxes are regulated broadly in the same way all over the Country, albeit with some differences between Cantons, essentially in terms of deductions and tax rates. The Confederation only levies income tax whereas the Cantons and Municipalities also collect a wealth tax. Taxpayers have an unlimited tax liability in Switzerland if they are domiciled in Switzerland. It is important to note that under Swiss law residence and domicile are nearly identical notions. The domicile is defined as the place where the taxpayer is physically present with the intention to settle. There are no tests to establish domicile. Several factors are taken into account, amongst which are the time spent in Switzerland as well as family, professional and social ties to Switzerland.

Income tax is levied on the worldwide income of the taxpayer, although capital gains realised on private assets are tax exempt. Foreign real estate income and income for which a double taxation agreement grants the taxing rights to another Country are not taxable in Switzerland but are taken into account to determine the applicable tax rate, as rates are progressive. The tax rates vary from one Canton to another and within the Cantons, from one Municipality to another (Maximum rate (including federal, cantonal and municipal taxes): Geneva: approx. 42%; Valais: approx. 36.5%; Vaud: approx. 41.5%).

Wealth tax is levied on the taxpayer's worldwide wealth, with the exception of foreign real estate assets, which are taken into account to determine the applicable tax rate. It is worth noting that unlisted securities are valued based on the "practitioner's method", which takes into account the net asset value of the company as well as its capitalized past profits, which can lead to high valuations. The wealth tax rates also vary depending on Cantons and Municipalities (Maximum rate (including cantonal and municipal taxes): Geneva: approx. 0.85%; Valais: approx. 0.65%; Vaud: approx. 0.79%).

Geneva, Vaud and Valais all have a "tax shield" system aimed at preventing that the combination of income and wealth taxes become confiscatory. The systems that apply in Geneva and Vaud are very similar and limit the cantonal and municipal taxes to a maximum of 60% of the taxable income. However, for the calculation, they take into account a hypothetical income equal to at least 1% of the taxable wealth, which limits the effect of the tax shield. Valais has no such hypothetical income and the maximum effect of the tax shield can lead to essentially halving the wealth tax of the taxpayer.

Lump sum taxation

As we saw above, the ordinary system is not particularly advantageous. Wealthy people who move to Switzerland do so in order to benefit from lump sum taxation. If a person meets a certain number of conditions, they are entitled to pay, instead of the taxes calculated under the ordinary system, a tax based not on their income and wealth, but on their expenses.

To be eligible for this system, the taxpayer must meet the following conditions: 1) not be a Swiss national; 2) be subject to unlimited taxation for the first time in Switzerland or after an absence of at least ten years; 3) not to have any gainful activity in Switzerland. We would like to draw the reader's attention to the fact that before deciding to come and live in Switzerland under the lump-sum taxation regime, it is important to ensure that the taxpayer meets this last condition.

The basic principle is that taxpayers pay tax based on their expenditure. However, the amount of tax must not fall below two thresholds. First, the amount must not be less than seven times the annual rent or rental value of the home in which the taxpayer lives. Secondly, it must not be less than CHF 421,700 for the calculation of direct federal tax and an amount determined by each canton (Geneva: CHF 445,116; Valais: CHF 250,000; Vaud: CHF 437,600) for the calculation of cantonal and communal taxes. As mentioned above, this minimum amount is higher for people who apply for a residence permit based on major tax interests for the canton in which they are domiciled. These minimum amount varies from canton to canton (Geneva: CHF 750,000; Valais: CHF 700,000; Vaud: CHF 1,000,000).

Once the amount of tax has been calculated based on expenditure, a control computation is carried out each year with the taxpayer's annual tax return. This involves comparing the amount of tax based on expenditure with the amount of tax based on a certain number of items, with only the higher of the two amounts being due. Among the items taken into consideration for the control computation are movable and immovable assets located in Switzerland and income thereof, movable capital invested in Switzerland and income for which the taxpayer claims partial or total relief from foreign tax pursuant to a double taxation agreement concluded by Switzerland.

In principle, lump sum taxpayers can benefit from double taxation agreements without any restrictions. There are a number of exceptions to this rule, particularly in the case of Switzerland's double taxation agreements with Austria, Belgium, Canada, France, Germany, Italy, Norway and the United States. The treaty between Switzerland and the United Kingdom does not contain any such restrictions.

Gift and inheritance taxes

Gift and inheritance taxes in Switzerland are purely cantonal and municipal and are not subject to the previously mentioned harmonization law. This means that Cantons and Municipalities are free to decide if and how they wish to levy such taxes, with some cantons even deciding not to levy any at all. In Cantons where they exist, inheritance tax is levied on the global estate of the deceased, excluding any real estate abroad, and gift tax is levied on inter vivos gifts made by a Swiss resident if the gift is a moveable asset. For real estate properties, gift tax is levied on gifts of properties located in Switzerland, regardless of where the donor is domiciled.

In Vaud, there is no gif or inheritance tax between spouses. Gifts and inheritance received by direct descendants are taxed at a maximum rate of 7% (3.5% cantonal tax and 3.5% municipal tax). However, the tax is halved for foreign nationals who never had a gainful activity in Switzerland. Some Municipalities in Vaud do not levy gift or inheritance tax in direct line, thus limiting the maximum rate to 3.5%. Transmission of assets to unrelated persons are taxed at 50%. In Valais, no gift or inheritance tax is levied between spouses nor in direct line. The rate applicable to non-parents is 25%. In Geneva, spouses and children are exempt, except if the deceased/donor was a lump sum taxpayer in one of the last three tax periods, in which case the maximum rate is 6%. Non-related beneficiaries are liable at a maximum rate of 54.6%.

Conclusion

In conclusion, it is possible for British nationals to settle in Switzerland. However, since Brexit, the situation is more complicated in that they no longer benefit from the free movement of persons and are considered as third country nationals for the purposes of obtaining a residence or work permit. Furthermore, given the differences between Cantons in terms of direct taxes but also and maybe more importantly in terms of gift and inheritance taxes, is important to seek professional guidance before deciding where to relocate in Switzerland.