07.

ACQUIRING REAL ESTATE IN SWITZERLAND

LEGAL AND TAX CONSIDERATIONS

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When a foreign national wants to buy a property in Switzerland, there are two key questions. First, is it possible to buy any property freely, or are there any restrictions? Secondly, what are the tax implications of such an acquisition at the time of purchase, ownership and resale?

Can a foreign national freely purchase a property in Switzerland?

Even before looking to buy a property in Switzerland, foreign nationals should bear in mind that they must comply with the conditions set out in the Federal Act of 16 December 1983 on the Acquisition of Immovable Property in Switzerland by Foreign Non-Residents (ANRA), commonly known as the Lex Koller. Under this law, there are three main scenarios.

1. A foreign national domiciled abroad

A foreign national – regardless of which nationality – domiciled abroad may acquire commercial property without any restrictions, in his or her own name or through a company. The property may be used by the buyer or leased to a third party.

On the other hand, if the buyer wishes to purchase a home, this can only be done in his own name and only if the following conditions are met:

a) the property must be located in a tourist area as determined by each Canton;
b) the net floor area must not, in principle, exceed 200 m^2 and, if the property is not a condominium, the total surface area of the plot must not, as a general rule, exceed 1,000 m^2 ;
c) a unit from the cantonal quota must be available.

2. A European citizen domiciled in Switzerland

If a European citizen who is a national of a Member State of the European Union or the European Free Trade Association (EFTA) takes up residence in Switzerland, he or she may purchase a property without any restrictions.

3. Non-European nationals domiciled in Switzerland

As long as they do not hold a C permit, foreign nationals from non-EU/EFTA countries domiciled in Switzerland may only acquire their main residence at their legal and effective place of domicile.

If the purchase involves a secondary residence, the buyer must ensure that the conditions set out in the Federal Act of 20 March 2015 on Second Homes Residences (SHA) are met.

This law defines the conditions governing the construction of new residential properties and the modification of existing properties and their use in municipalities where the proportion of second homes exceeds 20%.

A foreign national wishing to purchase a property as a resident of Switzerland must hold a residence permit or a work permit. This is relatively straightforward for European nationals, as they benefit from the Agreement on the Free Movement of Persons between Switzerland and the European Union. However, the situation is much more complicated for third-country nationals. It should be pointed out that from 1 January 2021 British nationals are considered as third-country nationals. On the other hand, British nationals domiciled in Switzerland before this date benefit from grandfather rights.

We would like to draw the reader's attention to the fact that to be considered resident in Switzerland within the meaning of the Lex Koller, it is not sufficient to be the holder of a short-term residence permit, but that you must be in possession of a B permit. In principle, a residence permit for studying is not sufficient.

What is the tax treatment of property in Switzerland?

There are two ways of owning real estate in Switzerland. Either the owner acquires a property in his own name and holds it directly, or he may acquire it through a real estate company (REC), in which case the ownership is indirect. As we shall see, there are differences in the taxes generated by property ownership depending on whether it is held directly or indirectly.

There are essentially three stages in which taxes are levied on property ownership: upon purchase of the property (a), whilst owning the property (b), and upon its sale (c).

a. Upon purchasing a property

Firstly, the purchase of a property may generate a transfer tax. This tax is purely cantonal and is not harmonized by federal law, which explains the significant differences between cantons. Some cantons only subject property transfers where the ownership changes in the Land register, whereas others also tax transfers of shares in RECs. The rates also vary substantially between cantons, with the extreme example of Schwyz not levying any such tax and Neuchatel and Vaud both having the highest rate of 3.3%.

b. During the period of ownership of the property

As long as one owns a real estate property in Switzerland, rental income is subject to personal income tax if it is held directly. If the property is not rented out, the owner is taxed on a hypothetical income, known as the rental value. Maintenance costs as well as mortgage interest are deductible. Although income tax is harmonized by a federal law, the maximum rates are still very different between cantons, ranging between approx. 20% in Schwyz to approx. 42% in Geneva.

The direct owner will also be liable for wealth tax on the tax value of the property. The lowest maximum cantonal rate for wealth tax is approx. 0.2% in Schwyz and the highest is approx. 0.85% in Geneva.

In case of indirect ownership, the company is liable for corporate income tax, with rates varying from approx. 12% in Zug to over 20% in Zurich. In some cantons, capital tax is also due, although given the very low rates and the fact that numerous cantons allow this tax to be credited towards corporate income tax, capital tax is rather insignificant. Distributions made by the REC to its shareholder, are taxable for the shareholder. Such distributions are subject to a 35% withholding tax, which Swiss tax residents can fully reclaim if they declare the income in their yearly tax return. Non-residents can only claim relief if the applicable double taxation treaty so provides. In this sense, the real estate returns are subject to double taxation: first to corporate income tax within the company, and then to the shareholder's personal income tax upon distribution. However, if the shareholder holds more than 10% of the shares of the company, such distributions benefit from a 30% tax reduction. Furthermore, the shareholder may freely decide if the company will distribute any dividends. He may thus limit his taxable income, which – in some cantons – may allow him to benefit from the cantonal tax shield. This is not possible for a person holding a property directly, as the rental income accrues to him as taxable income as soon as it is paid. Furthermore, if an owner sells his property to an REC that he owns, he can set up a vendor loan, which the company can repay to him tax-free. The amount of the loan will however be subject to wealth tax for the shareholder.

A yearly property tax is also levied in some cantons, regardless of whether the property is held directly or indirectly. This tax is based on the value of the property and no deductions are possible. The maximum rate is in canton Fribourg, at 0.3%.

c. Upon selling the property

At the time of the sale of the property, real estate gains tax is levied regardless of whether the property is held directly or indirectly. This is an exception to the general rule in Switzerland whereby capital gains on private assets are tax exempt. The reasoning for implementing this tax is to prevent people from speculating on the real estate market and driving prices up.

In case of indirect ownership, the tax is triggered by the sale of the shares of an REC. In such a case, the real estate gains tax calculated on the value of the property and not the sale price for the shares. Some cantons even tax the sale of a minority stake in an REC, although the majority of cantons require that the stake be over 50% of the shares.

Rates depend of the duration of ownership and are reduced the longer the property is owned, with Geneva even exempting any gains after 25 years of ownership. It should also be noted that an REC that sells its property may have to be liquidated, which would generate not only a tax on the liquidation profit within the company but also an income tax for the shareholder on the possible liquidation dividend.

What is the tax treatment of property in Switzerland?

There are reasons other than tax that may lead to deciding for indirect ownership. For example, the transfer of assets by way of inheritance can be greatly facilitated if an REC is used. It is indeed much easier to divide shares of a company amongst one's heirs than to transfer portions of a real estate property to them. Furthermore, once the heirs are shareholders in an REC, strategic decision for the maintenance and/or development of the property can be taken by a simple majority at a general meeting, whereas direct joint ownership imposes – in principle – a unanimous decision.

It is also worth noting that the use of REC is not very common in Switzerland and that buyers are sometimes reluctant to acquire shares in an REC rather than the property directly. In this regard, a property owner who aims to sell his property may be inspired to retain direct ownership rather than to form an REC.